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ABSTRACT

Testimonies were heard by the Subcommittee on Indian Affairs and Public Lands in reference to the Indian Child Welfare Act of 1978, which establishes standards for the placement of Indian children in foster or adoptive homes to prevent the breakup of Indian families. Representatives from the following organizations testified: Administration for Children, Youth and Families; Department of the Interior; National Tribal Chairmen's Association; National Congress of American Indians; Association of American Indian Affairs; Rosebud Sioux Tribe; Yakima Tribe; Puyallup Tribe of Washington; American Academy of Child Psychiatry; National Conference of Catholic Charities; AL-IND-ESK-A Corporation; Tacoma Urban Indian Center; and Central Maine Indian Association. Other representatives who provided statements were: Church of Jesus Christ of Latter-day Saints; Great Lakes Inter-Tribal Council; Boston Indian Council; Minnesota Chippewa Tribe; AH-BE-NO-GEE Center for Urban and Regional Affairs; Native American Family and Children Services; Urban Indian Child Resource Center; and Department of Justice. Additional materials submitted for the hearing record are included in the appendices. (ERB)

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INDIAN CHILD WELFARE ACT OF 1978

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS AND PUBLIC LANDS

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 1214

TO ESTABLISH STANDARDS FOR THE PLACEMENT OF INDIAN CHILDREN IN FOSTER OR ADOPTIVE HOMES, TO PREVENT THE BREAKUP OF INDIAN FAMILIES, AND FOR OTHER PURPOSES

HEARINGS HELD IN WASHINGTON, D.C.
FEBRUARY 9 AND MARCH 9, 1978

Serial No. 96–42

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Committee on Interior and Insular Affairs

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NOTE.—The first listed minority member is counterpart to the subcommittee chairman.

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CONTENTS

	Page
Hearings held:	
February 9, 1978	1
March 9, 1978	119
Text of S. 1214	2

THURSDAY, FEBRUARY 9, 1978

Statements:

Cardenas, Hon. Blandina, Commissioner, Administration for Children, Youth and Families, U.S. Department of Health, Education, and Welfare	56, 178
Lavis, Hon. Rick, Deputy Assistant Secretary for Indian Affairs, U.S. Department of the Interior	53, 173
Panel consisting of:	
Chief Calvin Isaac, Mississippi Band of Choctaw Indians, representing National Tribal Chairmen's Association	62, 190
Goldie Denny, director of social service, Quinault Indian Nation, representing National Congress of American Indians	65
LeRoy Wilder, attorney, representing Association of American Indian Affairs	68
Panel consisting of:	
Mona Shepherd, social service coordinator, Rosebud Sioux Tribe	74, 199
Virgil Hoff, attorney for the Rosebud Sioux Tribe	76
Mel Sampson, chairman of the Health, Employment and Welfare Council of the Tribal Council, Yakima Tribe	76
Faye La Pointe, Coordinator of Social Services for Child Welfare, Payallup Tribe of Washington	77, 203
Panel consisting of:	
Virginia Q. Bausch, executive director, American Academy of Child Psychiatry	80
Rena Uviller, director, Juvenile Rights Project, American Civil Liberties Union	82
Sister Mary Clare, director of Catholic Social Services of Anchorage, Alaska, representing the National Conference of Catholic Charities	85
Donald Mitchell, on behalf of Rural Alaska Community Action Program (RURALALCAP), Alaska	90
Don Reeves, legislative secretary, Friends Committee on National Legislation	98
Panel consisting of:	
Gregory Frazier, executive director, AL-IND-ESK-A Corp	10[illegible]
Vera Harris, acting director, Tsapah Child Placement Agency	107, 209
Elizabeth Cagey, administrative assistant, Tacoma Urban Indian Center	109, 209
Mike Ranco, executive director, health and social service, Central Maine Indian Association	112

THURSDAY, MARCH 9, 1978

Statements:

Barker, Robert W., special counsel to the Church of Jesus Christ of Latter-day Saints	159
Beauprey, Trilby, director, alternative living arrangements program, Great Lakes Inter-Tribal Council, Inc., Odanah, Wis	152, 262
Fraser, Hon. Donald, a U.S. Representative from the State of Minnesota	136, 240
La Pointe, Faye, coordinator for social services for child welfare, Payallup Tribe of Washington State	156
Letendre, Suzanne, director, Northeast Indian Family Structure Project; and Boston Indian Council, Inc	148, 256

Statements—Continued

Panel consisting of:
  Page
  Robert Aitken, director of social services, Minnesota Chippewa Tribe 124, 224
  Mr. Matson, counsel 125
  William Caddy, Cass County Department of Social Services, Cass County, Minn 126, 237
Panel consisting of:
  Patricia Bellanger, field director, AH-BE-NO-GEE, Center for Urban and Regional Affairs, University of Minnesota 131
  Beryl Bloom, director, United Indian Group House, Minneapolis, Minn 132
  Wilford Gurneau, director, Native American Family and Children Services, Minneapolis, Minn 133
Panel from the Urban Indian Child Resource Center, Oakland, Calif., consisting of:
  Omie Brown, director 138, 244
  C. Jacquelyne Arrowsmith, board member 138, 244
Panel from the Arena project, consisting of:
  Dorothy Buzawa, supervisor of the exchange 141, 248
  Mary Jane Fales, director 142, 248
Sims, Larry L., attorney/adviser, Office of Legal Counsel, U.S. Department of Justice 120, 212

APPENDIX

Additional material submitted for the hearing record from:

Committee on Interior and Insular Affairs:
  1. Background on the Indian Child Welfare Act, H.R. 12533 29
  2. Section-by-section analysis of H.R. 12533 35
  3. Department of the Interior views on H.R. 12533 42
  4. Comments of the Department of Justice on S. 1214 49
U.S. Department of the Interior: Prepared statement of Hon. Rick Lavis, Deputy Assistant Secretary for Indian Affairs 173
U.S. Department of Health, Education, and Welfare: Prepared statement of Hon. Blandina Cardenas, Commissioner, Administration for Youth and Families 178
National Tribal Chairmen's Association: Prepared statement of Calvin Isaac, tribal chief of the Mississippi Band of Choctaw Indians 190
Rosebud Sioux Tribe: Prepared statement of Mona Shepherd, special services coordinator, before the Senate Select Subcommittee on Indian Affairs 199
Puyallup Indian Tribe of Washington State: Prepared statement of Faye La Pointe, social service director 203
The Navajo Nation: Prepared statement of Bobby George, director, division of social welfare 207
U.S. Department of Justice: Prepared statement of Larry Simms, attorney/adviser, Office of Legal Counsel 212
The Minnesota Chippewa Tribe:
  1. Prepared statement of Robert Aitken, director of social service (with attachments) 224
  2. Attachment I: Resolution No. 239-77 in support of S. 1214 228
  3. Attachment II: Breakdown of key positions within the social service division 229
  4. Attachment III: Letters of support for Minnesota Chippewa Tribe social service division 233
Cass County Department of Social Services: Prepared statement of William Caddy, supervisor 237
Hon. Donald M. Fraser, a U.S. Representative from the State of Minnesota: Prepared statement 240
Urban Indian Child Resource Center: Combined prepared statement of Omie Brown, director; and C. Jacquelyne Arrowsmith, board member 244
The Arena project: Combined prepared statement of Mary Jane Fales, director, and Dorothy Buzawa, supervisor 248
Northeast Indian Family Structure Project, Boston Indian Council, Inc.: Prepared statement of Suzanne Letendre, director 256
Great Lakes Inter-Tribal Council, Inc.: Prepared statement of Trilby Beauprey, director, Alternative Living Arrangements Program 262

Additional comments on the Indian Child Welfare Act were also received from the following:

Page
State of Arizona 274
State of Arkansas 277
State of California 278
State of Colorado 279
State of Georgia 281
Commonwealth of Massachusetts 283
State of New Mexico 285
State of North Dakota 286
State of Oklahoma 287
State of Oregon 288
State of Washington 289
State of Wisconsin 290
Federal Regional Council of New England 293
National Congress of American Indians 296
Catholic Children's Services, Seattle, Wash 298
Catholic Social Service of Tucson 301
National Conference of Catholic Charities 303

INDIAN CHILD WELFARE ACT OF 1978

THURSDAY, FEBRUARY 9, 1978

House of Representatives,
Subcommittee on Indian Affairs and Public Lands,
Committee on Interior and Insular Affairs,
Washington, D.C.

The subcommittee met at 10:10 a.m., pursuant to notice, in room 1324, Longworth House Office Building, Hon. Teno Roncalio (chairman of the subcommittee) presiding.

Mr. Roncalio. The Subcommittee on Indian Affairs and Public Lands of the House Interior and Insular Affairs Committee will come to order.

I apologize for being 10 minutes late.

This is a meeting to look into S. 1214, which passed the Senate November 4, and was referred to this committee.

Without objection, the background, and section-by-section analysis will be entered into the record.

Do we have the Senate report, too?

Yes; we do. The Senate report will be placed in the committee's files.

[The bill, S. 1214; background on the Indian Child Welfare Act, H.R. 12533; section-by-section analysis of H.R. 12533; views of the Department of the Interior on H.R. 12533; and the comments of the Department of Justice on S. 1214 follow.]

95th CONGRESS
1st Session

S. 1214

IN THE HOUSE OF REPRESENTATIVES

November 8, 1977

Referred to the Committee on Interior and Insular Affairs

AN ACT

To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Child Welfare Act of 1977".

FINDINGS

Sec. 2. Recognizing the special relations of the United States with the Indian and Indian tribes and the Federal responsibility for the care of the Indian people, the Congress finds that:

I

(a) An alarmingly high percentage of Indian children living within both urban communities and Indian reservations, are separated from their natural parents through the actions of nontribal government agencies or private individuals or private agencies and are placed in institutions (including boarding schools), or in foster or adoptive homes, usually with non-Indian families.

(b) The separation of Indian children from their families frequently occurs in situations where one or more of the following circumstances exist: (1) the natural parent does not understand the nature of the documents or proceedings involved; (2) neither the child nor the natural parents are represented by counsel or otherwise advised of their rights; (3) the agency officials involved are unfamiliar with, and often disdainful of Indian culture and society; (4) the conditions which led to the separation are not demonstrably harmful or are remediable or transitory in character; and (5) responsible tribal authorities are not consulted about or even informed of the nontribal government actions.

(c) The separation of Indian children from their natural parents, especially their placement in institutions or homes which do not meet their special needs, is socially and culturally undesirable. For the child, such separation can cause a loss of identity and self-esteem, and contributes directly to the unreasonably high rates among Indian children for dropouts, alcoholism and drug abuse, suicides, and crime. For the parents, such separation can cause a similar loss of self-esteem, aggravates the conditions which initially gave rise to the family breakup, and leads to a continuing cycle of poverty and despair. For Indians generally, the child placement activities of nontribal public and private agencies undercut the continued existence of tribes as self-governing communities and, in particular, subvert tribal jurisdiction in the sensitive field of domestic and family relations.

DECLARATION OF POLICY

SEC. 3. The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligations to the American Indian people, to establish standards for the placement of Indian children in foster or adoptive homes which will reflect the unique values of Indian culture, discourage unnecessary placement of Indian children in boarding schools for social rather than educational reasons, assist Indian tribes in the operation of tribal family development programs, and generally promote the stability and security of Indian families.

DEFINITIONS

SEC. 4. For purposes of this Act:

(a) "Secretary", unless otherwise designated, means the Secretary of the Interior.

(b) "Indian" means any person who is a member of or who is eligible for membership in a federally recognized Indian tribe.

(c) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided by the Bureau of Indian Affairs to Indians because of their status as Indians, including any Alaska Native villages, as listed in section II (b) (1) of the Alaska Native Claims Settlement Act (85 Stat. 688, 697).

(d) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

(e) "Tribal court" means any Court of Indian Offenses, any court established, operated, and maintained by an Indian tribe, and any other administrative tribunal of a tribe which exercise jurisdiction over child welfare matters in the name of a tribe.

(f) "Nontribal public or private agency" means any Federal, State, or local government department, bureau, agency, or other office, including any court other than a tribal court, and any private agency licensed by a State or local government, which has jurisdiction or which performs functions and exercises responsibilities in the fields of social services, welfare, and domestic relations, including child placement.

(g) "Reservation" means Indian country as defined in section 1151 of title 18, United States Code and as used in this Act, shall include lands within former reservations where the tribes still maintain a tribal government, and lands held by Alaska Native villages under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688). In a case where it has been judicially determined that a reservation has been diminished, the term "reservation" shall include lands within the last recognized boundaries of such diminished reservation prior to enactment of the allotment or pending statute which caused such diminishment.

(h) "Child placement" means any proceedings, judicial, quasi-judicial, or administrative, voluntary or involuntary, and public or private action (s) under which an Indian child is removed by a nontribal public or private agency from (1) the legal custody of his parent or parents, (2) the custody of any extended family member in whose care he has been left by his parent or parents, or (3) the custody of any extended family member who otherwise has custody in accordance with Indian law or custom, or (4) under which the parental or custodial rights of any of the above mentioned persons are impaired.

(i) "Parent" means the natural parent of an Indian child or any person who has adopted an Indian child in accordance with State, Federal, or tribal law or custom.

(j) "Extended family member" means any grandparent, aunt, or uncle (whether by blood or marriage), brother or sister, brother or sister-in-law, niece or nephew, first or second cousin, or stepparent whether by blood, or adoption, over the age of eighteen or otherwise emancipated, or as defined by tribal law or custom.

TITLE I—CHILD PLACEMENT JURISDICTION AND STANDARDS

SEC. 101. (a) No placement of an Indian child, except as provided in this Act shall be valid or given any legal force and effect, except temporary placement under circumstances where the physical or emotional well-being of the child is immediately and seriously threatened, unless (1) his parent or parents and the extended family member in whose care the child may have been left by his parent or parents or who otherwise has custody according to tribal law or custom, has been accorded not less than thirty days prior written notice of the placement proceeding, which shall include an explanation of the child placement proceedings, a statement of the facts upon which placement is sought, and a right: (A) to intervene in the proceedings as an interested party; (B) to submit evidence and present witnesses on his or her own behalf; and (C) to examine all reports or other documents and files upon which any decision with respect to child placement may be based; and (2) the party seeking to effect the child placement affirmatively shows that available remedial services and rehabilitative programs designed to prevent the breakup of the Indian family have been made available and proved unsuccessful.

(b) Where the natural parent or parents of an Indian child who falls within the provisions of this Act, or the extended family member in whose care the child may have been left by his parent or parents or who otherwise has custody in accordance with tribal law or custom, opposes the loss of custody, no child placement shall be valid or given any legal force and effect in the absence of a determination, supported by clear and convincing evidence, including testimony by qualified expert witnesses, that the continued custody of the child by his parent or parents, or the extended family member in whose care the child has been left, or otherwise has custody in accordance with tribal law or custom, will result in serious emotional or physical damage. In making such determination, poverty, crowded or inadequate housing, alcohol abuse or other nonconforming social behaviors on the part of either parent or extended family member in whose care the child may have been left by his parent or parents or who otherwise has custody in accordance with tribal law or custom, shall not be deemed prima facie evidence that serious physical or emotional damage to the child has occurred or will occur. The standards to be applied in any proceeding covered by this Act shall be the prevailing social and cultural standards of the Indian community in which the parent or parents or extended family member resides or with which the parent or parents or extended family member maintains social and cultural ties.

(c) In the event that the parent or parents of an Indian child consent to a child placement, whether temporary or permanent, such placement shall not be valid or given any legal force and effect, unless such consent is voluntary, in writing, executed before a judge of a court having jurisdiction over child placements, and accompanied by the witnessing judge's certificate that the consent was explained in detail, was translated into the parent's native language, and was fully understood by him or her. If the consent is to a nonadoptive child placement, the parent or parents may withdraw the consent at any time for any reason, and the consent shall be deemed for all purposes as having never been given. If the consent is to an adoptive child placement, the parent or parents may withdraw the consent for any reason at any time before the final decree of adoption: *Provided*, That no final decree of adoption may be entered within ninety days after the birth of such child or within ninety days after the parent or parents have given written consent to the adoption, whichever is later. Consent by the parent or parents of an Indian child given during pregnancy or within ten days after the birth of the child shall be conclusively presumed to be involuntary. A final decree of adoption may be set aside upon a showing that the child is again being placed for adoption, that the adoption did not comply with the requirements of this Act or was otherwise unlawful, or that the consent to the adoption was not voluntary. In the case of such a failed adoption, the parent or parents or the extended family member from whom custody was taken shall be afforded an opportunity to reopen the proceedings and petition for return of custody. Such prior parent or custodian shall be given thirty days notice of any proceedings to set aside or vacate a previous decree unless the prior parent or custodian waives in writing any right to such notice.

(d) No placement of an Indian child, except as otherwise provided by this Act, shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately threatened, unless his parent or parents, or the extended family member in whose care the child may have been left or who otherwise has custody in accordance with tribal law or custom, has been afforded the opportunity to be represented by counsel or lay advocate as required by the court having jurisdiction.

(e) Whenever an Indian child previously placed in foster care or temporary placement by any nontribal public or private agency is committed or placed, either voluntarily or involuntarily in any public or private institution, including but not limited to a correctional facility, institution for juvenile delinquents, mental hospital or halfway house, or is transferred from one foster home to another, notification shall forthwith be made to the tribe with which the child has significant contacts and his parent or parents or extended family member from whom the child was taken. Such notice shall include the exact location of the child's present placement and the reasons for changing his placement. Notice shall be made thirty days before the legal transfer of the child effected, if possible, and in any event within ten days thereafter.

SEC. 102. (a) In the case of any Indian child who resides within an Indian reservation which maintains a tribal court which exercises jurisdiction over child welfare matters, no child placement shall be valid or given any legal force and effect, unless made pursuant to an order of the tribal court. In the event that a duly constituted Federal or State agency or any representation thereof has good cause to believe that there exists an immediate threat to the emotional or physical well-being of an Indian child, such child may be temporarily removed from the circumstances giving rise to the danger provided that immediate notice shall be given to the tribal authorities, the parents, and the extended family member in whose care the child may have been left or who otherwise has custody according to tribal law or custom. Such notice shall include the child's exact whereabouts and the precise reasons for removal. Temporary removals beyond the boundaries of a reservation shall not affect the exclusive jurisdiction of the tribal court over the placement of an Indian child.

(b) In the case of an Indian child who resides within an Indian reservation which possesses but does not exercise jurisdiction over child welfare matters, no child placement, by any nontribal public or private agency shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately and seriously threatened, unless such jurisdiction is transferred to the State pursuant to a mutual agreement entered into between the State and the Indian tribe pursuant to subsection (j) of this section. In the event that no such agreement is in effect, the Federal agency or agencies servicing said reservation shall continue to exercise responsibility over the welfare of such child.

(c) In the case of any Indian child who is not a resident of an Indian reservation or who is otherwise under the jurisdiction of a State, if said Indian child has significant contacts with an Indian tribe, no child placement shall be valid or given any legal force and effect, except temporary placements under circumstances where the physical or emotional well-being of the child is immediately and seriously threatened, unless the Indian tribe with which such child has significant contacts has been accorded thirty days prior written notice of a right to intervene as an interested party in the child placement proceedings. In the event that the intervening tribe maintains a tribal court which has jurisdiction over child welfare matters, jurisdiction shall be transferred to such tribe upon its request unless good cause for refusal is affirmatively shown.

(d) In the event of a temporary placement or removal as provided in subsections (a), (b), and (c) above, immediate notice shall be given to the parent or parents, the custodian from whom the child was taken if other than the parent or parents, and the chief executive officer or such other person as such tribe or tribes may designate for receipt of notice. Such notice shall include the child's exact whereabouts, the precise reasons for his or her removal, the proposed placement plan, if any, and the time and place where hearings will be held if a temporary custody order is to be sought. In addition, where a tribally operated or licensed temporary child placement facility or program is available, such facilities shall be utilized. A temporary placement order must be sought at the next regular session of the court having jurisdiction and in no event shall any temporary or emergency placement exceed seventy-two hours without an order from the court of competent jurisdiction.

(e) For the purposes of this Act, an Indian child shall be deemed to be a resident of the reservation where his parent or parents, or the extended family member in whose care he may have been left by his parent or parents or who otherwise has custody in accordance with tribal law or custom, is resident.

(f) For the purposes of this Act, whether or not a nonreservation resident Indian child has significant contacts with an Indian tribe shall be an issue of fact to be determined by the court on the basis of such considerations as: Membership in a tribe, family ties within the tribe, prior residency on the reservation for appreciable periods of time, reservation domicile, the statements of the child demonstrating a strong sense of self-identity as an Indian, or any other elements which reflect a continuing tribal relationship. A finding that such Indian child does not have significant contacts with an Indian tribe sufficient to warrant a transfer of jurisdiction to a tribal court under subsection (c) of this section does not waive the preference standards for placement set forth in section 103 of this Act.

(g) It shall be the duty of the party seeking a change of the legal custody of an Indian child to notify the parent or parents, the extended family members from whom custody is to be taken, and the chief executive of any tribe or tribes with which such child has significant contacts by mailing prior written notice by registered mail to the parent or parents, or extended family member, and the chief executive officer of the tribe, or such other persons as such tribe or tribes may designate: *Provided*, That the judge or hearing officer at any child placement proceeding shall make a good faith determination of whether the child involved is Indian and, if so, whether the tribe or tribes with which the child has significant contacts were timely notified.

(h) Any program operated by a public or private agency which removes Indian children from a reservation area and places them in family homes as an incident to their attendance in schools located in communities in off-reservation areas and which are not educational exemptions as defined in the Interstate Compact on the Placement of Children shall not be deemed child placements for the purposes of this Act. Such programs shall provide the chief executive officer of said tribe with the same information now provided to sending and receiving States which are members of the Interstate

Compact on the Placement of Children. This notification shall be facilitated by mailing written notice by registered mail to the chief executive officer or other such person as the tribe may designate.

(i) Notwithstanding the Act of August 15, 1953 (67 Stat. 588), as amended, or any other Act under which a State has assumed jurisdiction over child welfare of any Indian tribe, upon sixty days written notice to the State in which it is located, any such Indian tribe may reassume the same jurisdiction over such child welfare matters as any other Indian tribe not affected by such Acts: *Provided*, That such Indian tribe shall first establish and provide mechanisms for implementation of such matters which shall be subject to the review and approval of the Secretary of the Interior. In the event the Secretary does not approve the mechanisms which the tribe proposes within sixty days, the Secretary shall provide such technical assistance and support as may be necessary to enable the tribe to correct any deficiencies which he has identified as a cause for disapproval. Following approval by the Secretary, such reassumption shall not take effect until sixty days after the Secretary provides notice to the State which is asserting such jurisdiction. Except as provided in section 102 (c), such reassumption shall not affect any action or proceeding over which a court has already assumed jurisdiction and no such actions or proceeding shall abate by reason of such reassumption.

(j) States and tribes are specifically authorized to enter into mutual agreements or compacts with each other, respecting the care, custody, and jurisdictional authority of each party over any matter within the scope of this Act, including agreements which provide for transfer of jurisdiction on a case-by-case basis, and agreements which provide for concurrent jurisdiction between the States and the tribes. The provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 78) shall not limit the powers of States and tribes to enter into such agreements or compacts. Any such agreements shall be subject to revocation by either party upon sixty days written notice to the other. Except as provided in section 102 (c) such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction and no such action or proceeding shall abate by reason of such revocation: *And provided further,* That such agreements shall not waive the rights of any tribe to notice and intervention as provided in this Act nor shall they alter the order of preference in child placement provided in this title. The Secretary of the Interior shall have sixty days after notification to review any such mutual agreements or compacts or any revocation thereof and in the absence of a disapproval for good cause shown, such agreement, compact, or revocation thereof shall become effective.

(k) Nothing in this Act shall be construed to either enlarge or diminish the jurisdiction over child welfare matters which may be exercised by either State or tribal courts or agencies except as expressly provided in this Act.

SEC. 103. (a) In offering for adoption an Indian child, in the absence of good cause shown to the contrary, a preference shall be given in the following order: (1) to the child's extended family; (2) to an Indian home on the reservation where the child resides or has significant contacts; (3) to an Indian home where the family head or heads are members of the tribe with which the child has significant contacts; and (4) to an Indian home approved by the tribe: *Provided, however,* That each Indian tribe may modify or amend the foregoing order of preference and may add or delete preference categories by resolution of its government.

(b) In any nonadoptive placement of an Indian child, every nontribal public or private agency, in the absence of good cause shown to the contrary, shall grant preferences in the following order: (1) to the child's extended family; (2) to a foster home, if any, licensed or otherwise designated by the Indian tribe occupying the reservation of which the child is a resident or with which the child has significant contacts; (3) to a foster home, if any, licensed by the Indian tribe of which the child is a member or is eligible for membership; (4) to any other foster home within an Indian reservation which is approved by the Indian tribe of which the child is a member or is eligible for membership in or with which the child has significant contacts; (5) to any foster home run by an Indian family; and (6) to a custodial institution for children operated by an Indian tribe, a tribal organization, or nonprofit Indian organization: *Provided, however,* That each Indian tribe may modify or amend the foregoing order of preferences, and may add or delete preference categories, by resolution of its government body.

(c) Every nontribal public or private agency shall maintain a record evidencing its efforts to comply with the order of preference provided under subsections (a) and (b) in each case of an Indian child placement. Such records shall be made available, at any time upon request of the appropriate tribal government authorities.

(d) Where an Indian child is placed in a foster or adoptive home, or in an institution, outside the reservation of which the child is a resident or with which he maintains significant contacts, pursuant to an order of a tribal court, the tribal court shall retain continuing jurisdiction over such child until the child attains the age of eighteen.

SEC. 104. In order to protect the unique rights associated with an individual's membership in an Indian tribe, after an Indian child who has been previously placed attains the age of eighteen, upon his or her application to the court which entered the final placement decree, and in the absence of good cause shown to the contrary, the child shall have the right to learn the tribal affiliation of his parent or parents and such other information as may be necessary to protect the child's rights flowing from the tribal relationship.

SEC. 105. In any child placement proceeding within the scope of this Act, the United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the laws of any Indian tribe applicable to a proceeding under the Act and to any tribal court orders relating to the custody of a child who is the subject of such a proceeding.

TITLE II—INDIAN FAMILY DEVELOPMENT

SEC. 201. (a) The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to carry out or make grants to Indian tribes and Indian organizations for the purpose of assisting such tribes or organizations in the establishment and operation of Indian family development programs on or near reservations, as described in this section, and in the preparation and implementation of child welfare codes. The objective of every Indian family development program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or parents, or the custody of any extended family member in whose care he has been left his parent or parents, or one who otherwise has custody according to tribal law or custom, shall be effected only as a last resort. Such family development programs may include, but are not limited to, some or all of the following features:

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the construction, operation, and maintenance of family development centers, as defined in subsection (b) hereof;

(3) family assistance, including homemakers and home counselors, day care, after school care, and employment, recreational activities, and respite services;

(4) provision for counseling and treatment of Indian families and Indian children;

(5) home improvement programs;

(6) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(7) education and training of Indians, including tribal court judges and staff, in skills relating to child welfare and family assistance programs;

(8) a subsidy program under which Indian adoptive children are provided the same support as Indian foster children; and

(9) guidance, legal representation, and advice to Indian families involved in tribal or nontribal child placement proceedings.

(b) Any Indian foster or adoptive home licensed or designated by a tribe (1) may accept Indian child placements by a nontribal public or private agency and State funds in support of Indian children; and (2) shall be granted preference in the placement of an Indian child in accordance with title I of this Act. For purposes of qualifying for assistance under any federally assisted program, licensing by a tribe shall be deemed equivalent to licensing by a State.

(c) Every Indian tribe is authorized to construct, operate, and maintain a family development center which may contain, but shall not be limited to—

(1) facilities for counseling Indian families which face disintegration and, where appropriate, for the treatment of individual family members;

(2) facilities for the temporary custody of Indian children whose natural parent or parents, or extended family member in whose care he has been left by his parent or parents or one who otherwise has custody

according to tribal law or custom, are temporarily unable or unwilling to care for them or who otherwise are left temporarily without adequate adult supervision by an extended family member.

SEC. 202. (a) The Secretary is also authorized under such rules and regulations as he may prescribe to carry out, or to make grants to Indian organizations to carry out, off-reservation Indian family development programs, as described in this section.

(b) Off-reservation Indian family development programs operated through grants with local Indian organizations, may include, but shall not be limited to, the following features:

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children are provided the same support as Indian foster children;

(2) the construction, operation, and maintenance of family development centers providing the facilities and services set forth in section 201 (d);

(3) family assistance, including homemakers and home counselors, day care, after school care, and employment, recreational activities, and respite services;

(4) provision for counseling and treatment both of

Indian families which face disintegration and, where appropriate, of Indian foster and adoptive children; and

(5) guidance, representation, and advice to Indian families involved in child placement proceedings before nontribal public and private agencies.

SEC. 203. (a) In the establishment, operation, and funding of Indian family development programs, both on or off reservation, the Secretary may enter into agreements or other cooperative arrangements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare.

(b) There are authorized to be appropriated $26,000,000 during fiscal year 1979 and such sums thereafter as may be necessary during each subsequent fiscal year in order to carry out the purposes of this title.

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. (a) The Secretary of the Interior is authorized and directed under such rules and regulations as he may prescribe, to collect and maintain records in a single, central location of all Indian child placements which are effected after the date of this Act which records shall show as to each such placement the name and tribal affiliation of the child, the names and addresses of his natural parents and the extended family member, if any, in whose care he may have been left, the names and addresses of his adoptive parents, the names and addresses of his natural siblings, and the names and locations of any tribal or nontribal public or private agency which possess files or information concerning his placement. Such records shall not be open for inspection or copying pursuant to the Freedom of Information Act (80 Stat. 381), as amended, but information concerning a particular child placement shall be made available in whole or in part, as necessary to an Indian child over the age of eighteen for the purpose of identifying the court which entered his final placement decree and furnishing such court with the information specified in section 104 or to the adoptive parent or foster parent of an Indian child or to an Indian tribe for the purpose of assisting in the enrollment of said Indian child in the tribe of which he is eligible for membership and for determining any rights or benefits associated with such membership. The records collected by the Secretary pursuant to this section shall be privileged and confidential and shall be used only for the specific purposes set forth in this Act.

(b) A copy of any order of any nontribal public or private agency which effects the placement of an Indian child within the coverage of this Act shall be filed with the Secretary of the Interior by mailing a certified copy of said order within ten days from the date such order is issued. In addition, such public or private agency shall file with the Secretary of the Interior any further information which the Secretary may require by regulations in order to fulfill his recordkeeping functions under this Act.

SEC. 302. (a) The Secretary is authorized to perform any and all acts and to make rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this Act.

(b) (1) Within six months from the date of this Act, the Secretary shall consult with Indian tribes, Indian organizations, and Indian interest agencies in the consideration and formation of rules and regulations to implement the provisions of this Act.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, respectively.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and

regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act.

(c) The Secretary is authorized to revise and amend any rules and regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the Secretary shall present the proposed revision or amendment to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, respectively, and shall, to the extent practicable, consult with the tribes, organizations, and agencies specified in subsection (b) (1) of this section, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

TITLE IV—PLACEMENT PREVENTION STUDY

SEC. 401. (a) It is the sense of Congress that the absence of locally convenient day schools contributes to the breakup of Indian families and denies Indian children the equal protection of the law.

(b) The Secretary is authorized and directed to prepare and to submit to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs and Committee on Education and Labor of the United States House of Representatives, respectively, within one year from the date of enactment of this Act, a plan, including a cost analysis statement, for the provision to Indian children of schools located near the students home. In developing this plan, the Secretary shall give priority to the need for educational facilities for children in the elementary grades.

Passed the Senate November 4 (legislative day, November 1), 1977.

Attest: J. S. KIMMITT,
Secretary.

BACKGROUND ON THE INDIAN CHILD WELFARE ACT, H. R. 12533

S. 1214 was passed by the Senate on November 4, 1977, and was referred to the Committee on Interior and Insular Affairs on November 8th. The Subcommittee on Indian Affairs and Public Lands held hearings on the bill on February 9th and March 9th. On April 18, the Subcommittee marked-up the bill by adopting an amendment in the nature of a substitute. The substitute was introduced as a clean bill by Mr. Udall and Mr. Roncalio.

The basic purpose of this legislation is to stem the outflow of Indian children from Indian homes into non-Indian foster and adoptive homes and institutions by recognizing the legimate jurisdiction of Indian tribes over their children; by establishing minimum Federal standards in State proceedings involving Indian children; and by establishing preferences for the placement of Indian children in Indian foster or adoptive homes or institutions.

The need for this kind of remedial legislation has gradually emerged over the past decade. Surveys of states with large Indian populations conducted by the Association of American Indian Affairs in 1969 and in 1974 indicated that approximately 25-35 per cent of all Indian children are separated from their families and placed in foster and adoptive homes, or institutions. The federal boarding-school and dormitory programs have long been repudiated for their splintering effect on Indian families. The Bureau of Indian Affairs indicated in their 1971 school census that 34,538 children live in its institutional facilities rather than at home. This represents more than 17 per cent of the Indian school age population of fedrally recognized tribes and school age population of federally recognized tribes and 60 per cent of the children enrolled in BIA schools. On the Navajo Reservation, about 20,000 children or 90 percent of the BIA school population live at boarding schools.

Recently, much attention has been drawn nation-wide to what is commonly referred to as the "Child welfare crisis" (educational under achievement, alcohol and drug abuse, and battered children). The child welfare crisis for Indian child primarily centers on the disparity in placement rates for Indian children and and for non-Indian children. For example, in Minnesota, one in every eight Indian children under eighte years of age is living in an adoptive home, and Indian childr are placed in foster care or in adoptive homes at a per-capit rate five times greater than non-Indian children; in Montana, the ratio of Indian foster care placement is at least 13 time greater; in South Dakota, 40 per cent of all adoptions made by the state's Department of Public Welfare since 1967-68 are of Indian children, yet Indians make up only 7 per cent of th juvenile population; in Washington, the Indian adoption rate 19 times greater and the foster care rate is ten times greate The risk run by Indian children of being separated from their parents is nearly 1600 per cent greater than it is for non-In children in the state of Wisconsin. These figures document a hasardrous situation for Indian families; Indian children live in fear of losing their families, and the reverse is also true, Indian parents are continously threatened by the possible loss of their children.

As early as 1973, the Senate Committee on Interior, Subcommittee on Indian Affairs, began to receive reports that an alarming high percentage of Indian children were being separated from their natural parents permanently through the actions of nontribal government agencies and, in most cases, placed with non-Indian families. The reports indicated that frequently the placements became permanent although the conditions that led to the need for placement away from home often were either temporary or remedial in nature. Also, litigation reports showed that many permanent placements occurred in situations where the Indian people involved did not understand the nature of the legal proceedings through which they relinquished their rights to their child.

In 1974, the Senate Subcommittee on Indian Affairs held oversight hearings on Indian child placement, and the testimony received strongly supported the earlier reports and pointed out that serious emotional problems often occur as a result of placing Indian children in homes which do not reflect their special cultural needs.

The American Indian Policy Review Commission in its Task Force IV report supports the comments made by child welfare experts and Indian people at the 1974 hearings. The Task Force made two primary recommendations: (a) that total jurisdiction over child welfare matters involving children from reservation areas be left firmly in the hands of the tribe when such tribe expresses a desire to exercise such jurisdiction, and (b) that tribes be provided with adequate financial assistance to allow them to establish Indian controlled family development programs at the local level.

The American Indian Policy Review Commission's final report stresses the right of a tribe to notice of and to have an opportunity to intervene in any nontribal placement proceeding involving one of its juvenile members.

Public hearings were held on August 4, 1977, by the Senate Select Committee on Indian Affairs and the testimony received clearly documented that the conditions which had been brought to light in 1969 and 1974 still were present. Federal, State and local agencies were criticized for their failure to develop understanding and sensitivity to the cultural needs of Indian children, and for their abysmally poor record for returning Indian children to their natural parents.

The hearings did point to the fact, however, that where the tribes had obtained funds to run child placement and family development programs, such programs had produced a significant drop in the number of children placed away from home. The Quinault Nation in Washington reported a decrease of as much as 40 % of the number of children in placement since the inception of their program.

The Subcommittee feels that there is a definite need for special legislation in this area because of the extreme poverty which exists on reservation areas and among Indian families near the reservations and because of the unique cultural differences. Assimilation has been tried, but the continued educational under achievement of Indian children contradicts the validity of that approach. Indian tribes have indicated a strong desire and ability to plan for and operate their own directly funded programs in a number of areas including child welfare.

H. R. 12533 contains four titles. Title I establishes standards for child placement proceedings which will insure that Indian parents will be accorded a fair hearing when a child placement is at issue. It provides that when foster or adoptive placement becomes necessary, preference should be given to the child's extended family first, and secondarily to Indian homes and institutions. It also provides that the courts of the United States as well as state and tribal courts give full faith and credit to any tribal court order relating to the custody of a child within their jurisdiction.

Title II authorizes the Secretary of the Interior to make grants to Indian tribes and organizations for the purpose of establishing family development programs on and off the reservations. Such programs could include the hiring and training of culturally sensitive social workers, providing counseling and legal representation to Indian children and their families in a placement proceeding, and the licensing of culturally aware Indian and non-Indian foster homes.

Title III directs the Secretary to maintain records of all Indian child placements from the enactment of this act forward for essentially two purposes: (a) to provide a data base for remedial services, and (b) to be able to provide Indian children in placement with the necessary information upon reaching age 18 to enable them to exercise their tribal membership rights. Title IV requires the Secretary to conduct a study of the impact that the absence of locally convenient day school facilities has on Indian children and families, and directs the Secretary to submit to Congress a plan to remedy the situation.

SECTION-BY-SECTION ANALYSIS OF H. R. 12533

Sec. 1 provides that the Act may be cited as the "Indian Child Welfare Act of 1978".

Sec. 2 contains congressional findings relative to Indian Child Welfare.

Sec. 3 is a declaration of Congressional policy with respect to Indian child welfare.

Sec. 4 contains definitions of various terms used in the bill.

TITLE I

Section 101 (a) provides that an Indian tribe shall have exclusive jurisdiction over a child custody matter involving an Indian child residing or domiciled on an Indian reservation.

Subsection (b) provides that a State court having jurisdiction over an Indian child placement proceeding shall transfer such proceeding to the jurisdiciton of the appropriate Indian tribe upon a petition from the parent, Indian custodian or tribe.

Subsection (c) provides that the domicile of an Indian child shall be deemed that of the parent or Indian custodian.

Subsection (d) provides that an Indian custodian and an Indian tribe shall have a right to intervene in any State court proceeding involving an Indian child.

Subsection (e) provides that States shall give full faith and credit to actions of Indian tribes with respect to child placement proceedings.

Section 102 (a) provides that in any involuntary proceeding in State court for the placement of an Indian child, the party seeking placement must give written notice to the parent or Indian custodian or the appropriate Indian tribe if their location is known. If not, then the notice must be served upon the Secretary of the Interior. No action may take place until 30 days after receipt of such notice.

Subsection (b) provides that an indigent parent or Indian custodian of an Indian child shall have a right to court appointed counsel in a placement proceeding. The State court may also appoint counsel for the child, in its discretion. If State law does not make provision for counsel, the Secretary is authorized to pay reasonable fees and expenses of such counsel.

Subsection (c) authorizes any party to a child placement proceeding to examine all documents filed with the court.

Subsection (d) requires a party seeking placement, in a State court, of an Indian child to show what active efforts have been made to provide such remedial services as are available to prevent the breakup of the Indian family.

Subsection (e) provides that no placement of an Indian child in State court shall be ordered absent a showing, beyond a reasonable doubt, that continued custody by the parent or Indian custodian will result in serious emotional or physical damage to the child.

Section 103 (a) provides that any consent to the placement of an Indian child must be executed in writing before the judge of a court of competent jurisdiction and it must be shown that the consenting parent or Indian custodian fully understood the consequence and that, if they did not understand English, it was translated into a language they could understand.

Subsection (b) provides that consent by a parent or Indian custodian to a temporary or permanent placement of an Indian child short of adoption can be withdrawn at any time and that the child must be returned to the parent.

Subsection (c) provides that consent to an adoptive placement can be withdrawn at any time prior to entry of a final decree and, after entry of a final decree, can be withdrawn upon a showing of fraud or duress.

Subsection (d) provides that nothing in this section shall affect the right of a parent who has not consented to any placement.

Section 104 provides that an agrieved party can petition a competent court to set aside a placement made in violation of the provisions of sections 102 and 103. It further provides that no adoption which has been effective for two or more years can be invalidated under this section.

Section 105 (a) provides that, in an adoptive placement of an Indian child, a preference shall be given to a member of his family, other members of his tribe, and other Indian families.

Subsection (b) provides that in a non-adoptive placement of an Indian child, a preference shall be given to placement with Indian families or homes or institutions licensed or approved by Indian tribes or organizations.

Subsection (c) permits an Indian tribe to establish a different order of preference and that, where appropriate the preference of the child or parent shall be considered.

Subsection (d) provides that, in applying the preference requirements, the placing agency will give effect to the social and cultural standards prevailing in the Indian community.

Subsection (e) provides that the States shall maintain a record of each placement which shows efforts made to comply with the preference requirements of this section.

Section 106 (a) provides that, when there is a failed placement for adoption of an Indian child, the biologial parent or prior Indian custodian shall have a right to petition for return of the child.

Subsection (b) provides that where an Indian child is being removed from one foster situation to another foster or adoptive placement, the provisions of this act shall apply to such placement, unless the child is being returned to the parent or Indian custodian.

Section 107 provides that an Indian individual, 18 years old or more, who was the subject to an adoptive placement, may apply to the court entering his decree for such information as is necessary to permit him to enroll with his tribe.

Section 108 authorizes, and provides procedures for, the retrocession of jurisdiction back to Indian tribes, who became subject to State jurisdiction under Public Law 83-280 or any other Federal law, with respect to child placement proceedings.

Section 109 authorizes mutual compacts or agreements between States and Indian tribes with respect to jurisdiction over Indian child custody proceedings and provides for revocation of such agreements.

Section 110 provides comprehensive standards of notice and recordkeeping for public or private agencies removing Indian children from their homes, with the consent of the parents or Indian custodians, for purposes of education off the reservation.

TITLE II

Section 201 (a) authorizes the Secretary of the Interior to make grants to Indian tribes to establish and operate Indian child and family service programs on or near Indian reservations and sets out the various kinds of services and benefits which would be included in such programs.

Subsection (b) authorizes funds appropriated for such programs to be used as non-Federal matching share for funds made available under Title IV-B and XX of the Social Security Act and other similar Federal programs. It further provides that assistance under this Act shall not prevent assistance under other Federal programs.

Subsection (c) authorizes the tribes to construct and maintain facilities for assistance to Indian families and for temporary custody of Indian children.

Section 202 (a) and (b) authorizes the Secretary to make similar grants to Indian organizations to establish and operate off-reservation Indian family and child service programs.

Section 203 (a) authorizes the Secretary to enter into cooperative agreements with the Secretary of HEW with respect to funding and operation of Indian child and family service programs.

Subsection (b) authorizes the appropriation of $26,000,000 for FY 1980 and such sums as may be necessary thereafter for purposes of this title.

Section 204 defines the term "Indian" for purposes of sections 202 and 203 as it is defined in section 4 (c) of the Indian Health Care Improvement Act.

TITLE III

Section 301 (a) directs the Secretary to collect and maintain comprehensive records of all Indian child placements occurring after the date of enactment and to make such information available to an adopted Indian child over the age of eighteen or to adoptive or foster parents or to Indian tribes for purposes of enrolling the child in his tribe and otherwise taking advantage of the rights the child may have as an Indian.

Subsection (b) requires that any court document approving the placement of an Indian child shall be filed with the Secretary and any other court or agency record the Secretary may require to fulfill his record keeping functions under this Act.

Section 302 establishes timetables for the drafting, promulgation and amendement of rules and regulations of the Secretary in implementing this Act.

TITLE IV

Section 401 requires the Secretary to prepare and submit a report to the Congress with a plan for providing to Indian children schools located near the student's homes so they will not have to be placed in Federal boarding schools.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 6 - 1978

Honorable Morris K. Udall
Chairman, Committee on Interior and
Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This Department would like to make its views known on H.R. 12533, "The Indian Child Welfare Act of 1978," and urges the Committee to make the recommended changes during mark-up of the bill. We understand the Department of Justice has communicated its concerns with the bill to the Committee, and we urge the Committee to amend the bill to address those concerns.

If H.R. 12533 is amended as detailed herein and as recommended by the Department of Justice's letter of May 23, 1978, we would recommend that the bill be enacted.

Title I of H.R. 12533 would establish nationwide procedures for the handling of Indian child placements. The bill would vest in tribal courts their already acknowledged right to exclusive jurisdiction over Indian child placements within their reservations. It would also provide for transfer of such a proceeding from a State court to a tribal court if the parent or Indian custodian so petitions or if the Indian tribe so petitions, and if neither of the parents nor the custodian objects.

Requirements dealing with notice to tribes and parents and consent to child placements are also a major element of the bill. Testimony on the problems with present Indian child placement proceedings repeatedly pointed out the lack of informed consent on the part of many Indian parents who have lost their children.

Title I would also impose on state courts evidentiary standards which would have to be met before an Indian child could be ordered removed from the custody of his parents or Indian custodian. Court-appointed counsel would be available to the parent or custodian upon a finding of indigency by the court.

State courts would also be required, under the provisions of H.R. 12533, to apply preference standards set forth in section 105 in the placing of an Indian child. These preferences would strengthen the chances of the Indian child staying within the Indian community and growing up with a consistent set of cultural values.

Title II of H.R. 12533, entitled "Indian Child and Family Programs," would authorize the Secretary of the Interior to make grants to Indian tribes and organizations for the establishment of Indian family service programs both on and off the reservation. Section 204 would authorize $26,000,000 for that purpose.

Title III of H.R. 12533, entitled "Recordkeeping, Information Availability, and Timetables," would direct the Secretary of the Interior to maintain records, in a single central location, of all Indian child placements affected by the Act. Those records would not be open, but information from them could be made available to an Indian child over age 18, to his adoptive or foster parent, or to an Indian tribe, for the purpose of assisting in the enrollment of that child in an Indian tribe.

Title IV of H.R. 12533, entitled "Placement Prevention Study," would direct the Secretary of the Interior to prepare and submit to Congress a plan, including a cost analysis statement, for the provision to Indian children of schools located near their homes.

Although we support the concept of promoting the welfare of Indian children, we urge that the bill be amended in the following ways.

Section 4(9) defines the term "placement". This definition is crucial to the carrying out of the provisions of Title I. We believe that custody proceedings held pursuant to a divorce decree and delinquency proceedings where the act committed would be a crime if committed by an adult should be excepted from the definition of the term "placement". We believe that the protections provided by this Act are not needed in proceedings between parents. We also believe that the standards and preferences have no relevance in the context of a delinquency proceeding.

Section 101(a) would grant to Indian tribes exclusive jurisdiction over Indian child placement proceedings. We believe that section 101(a) should be amended to make explicit that an Indian tribe has exclusive jurisdiction only if the Indian child is residing on the reservation with a parent or custodian who has legal custody. The bill does not address the situation where two parental views are involved. Therefore, the definition of domicile is inadequate and the use of the word "parent" as defined does not articulate the responsibilities of the courts to both parents.

We believe that reservations located in states subject to P.L. 83-280 should be specifically excluded from section 101(a), since the provisions of section 108, regarding retrocession of jurisdiction, deal with the reassumption of tribal jurisdiction in those states.

Section 101(b) should be amended to prohibit clearly the transfer of a child placement proceeding to a tribal court when any parent or child over the age of 12 objects to the transfer.

Section 101(e), regarding full faith and credit to tribal orders, should be amended to make clear that the full faith and credit intended is that which states presently give to other states.

Section 102(a) would provide that no placement hearing be held until at least thirty days after the parent and the tribe receive notice. We believe that in many cases thirty days is too long to delay the commencement of such a proceeding. We suggest that the section be amended to allow the proceeding to begin ten days after such notice with a provision allowing the tribe or parent to request up to twenty additional days to prepare a case. This would allow cases where the parents or tribe do not wish a full thirty days notice to be adjudicated quickly, while still affording time to the parent or tribe who needs that time to prepare a case. We also suggest that the section be amended to require the Secretary to make a good faith effort to locate the parent as quickly as possible and to provide for situations in which the parent or Indian custodian cannot be located.

We also believe that there is a need for specific emergency removal provisions in H.R. 12533. A section should be added allowing the removal of a child from the home without a court order when the physical or emotional well-being of the child is seriously and immediately threatened. That removal should not exceed 72 hours without an order from a court of competent jurisdiction.

Section 102(b) would provide the parent or Indian custodian of an Indian child the right to court-appointed counsel if the court determines that he or she is indigent.

We are opposed to the enactment of this section. We do not believe that there has been a significant demonstration of need for such a provision to justify the financial burden such a requirement would be to both the States and the Federal Government.

Section 102(c) would allow all parties to a placement to examine all documents and files upon which any decision with respect to that placement may be based. This provision conflicts with the Federal Child Abuse and Neglect Treatment Act, P.L. 93-247, which provides confidentiality for certain records in child abuse and neglect cases. We believe that such a broad opening of records would lead to less reporting of child abuse and neglect. However, we do recognize the right of the parent to confront and be given an opportunity to refute any evidence which the court may use in deciding the outcome of a child placement proceeding. We recommend that the Indian Child Welfare Act conform with the provisions of P.L. 93-247.

Section 102(e) of H.R. 12533 would require the state court to find beyond a reasonable doubt, before ordering the removal of the child from the home, that continued custody on the part of the parent or custodian will result in serious emotional or physical damage to the child. We believe that the burden of proof is too high. We would support the language found in section 101(b) of the Senate-passed S. 1214, which would impose a burden of clear and convincing evidence and would set down certain social conditions which could not be considered by the court as prima facie evidence of neglect or abuse. We also believe that the language "will result" in serious damage to the child should be amended to read "is likely to result" in such damage. It is almost impossible to prove at such a high burden of proof that an act will definitely happen.

Section 105 of H.R. 12533 would impose on State courts certain preferences in placing an Indian child. Subsection (c) would substitute the preference list of the Indian child's tribe where the tribe has established a different order of preference by resolution.

Language should be included in that subsection which would require that resolution to be published in the Federal Register and later included in the Code of Federal Regulations. This would allow the State court easy access to the preferences of the various tribes.

It is also unclear what the last sentence in subsection (c) means in allowing the preference of the Indian child or parent to be considered "where appropriate". We believe that the preference of the child and the parent should be given due consideration by the court regardless of whether that court is following the preferences set forth in section 105(a) or 105(b), or whether it is following a preference list established by an Indian tribe. Therefore, we recommend that a separate subsection be added to section 105 stating that the preferences of the Indian child and of the parent be given due consideration by the court whenever an Indian child is being placed.

Section 106 deals with failed placements and requires that, whenever an Indian child is removed from a foster home or institution in which the child was placed for the purpose of further placement, such removal shall be considered a placement for purposes of the Act. We see no reason for requiring a full proceeding every time a child is moved from one form of foster care to another. We do, however, recognize the need for notification of the parents and the tribe of such move and for applying the preferences set forth in section 105. Therefore, we recommend that subsection (b) of section 106 be amended to require the notice and preference provisions to apply when a child is moved from one form of foster care to another and to require the removal to be considered as a new placement only in the case where termination of parental rights is at issue.

Section 107 deals with the right of an Indian who has reached age 18 and who has been the subject of a placement to learn of his or her tribal affiliation. We believe that rather than apply to the court for such information, the individual involved should apply to the Secretary of the Interior. Under the provisions of Title III, the Secretary would maintain a central file with the name and tribal affiliation of each child subject to the provisions of the Act. Therefore, the Secretary would be more likely than the State court to have the information needed to protect any rights of the individual involved which may flow from his or her tribal affiliation.

Finally, with respect to Title I, we believe that a section should be added which would state that the provisions of the Act should apply only with respect to placement proceedings which begin six months after the date of the enactment of the Act. This would allow states some time to familiarize themselves with the provisions of the Act and would thus avoid the chance of having large numbers of placements invalidated because of failure to follow the procedures of the Act.

Such a section should also state that the intent of the Act is not the pre-emption by the Federal government of the whole area of Indian child welfare and placement. In any case where a state has laws which are more protective than the requirements of this Act, e.g., with regard to notice and enforcement, those laws should apply.

We believe that many of the authorities granted by Title II of the bill are unnecessary because they duplicate authorities in present law, and therefore, we recommend the deletion of Title II.

We find especially objectionable in Title II the following:

- the authorization for an unlimited subsidy program for Indian adoptive children. We believe that any such program should be limited to hard-to-place children or children who are or would be eligible for foster care support from the Bureau of Indian Affairs. We also believe that the amount of any such support would have to be limited to the prevalent state foster care rate for maintenance and medical needs.
- the authorization for grants to establish and operate off-reservation Indian child and family service programs.
- the new separate authorization of $26,000,000 in section 203(b) of Title II.
- the provisions of section 201(c) which would authorize every Indian tribe to construct, operate, and maintain family service facilities regardless of the size of the tribe or the availability of existing services and facilities.
- the authorization for the use of Federal funds appropriated under Title II to be used as the non-Federal matching share in connection with other Federal funds.

However, we believe that the last sentence of section 201(b), providing that licensing or approval by an Indian tribe should be deemed equivalent to that done by a state, should remain in the bill under Title I as a separate section.

We have no objection to section 301 of Title III of H.R. 12533. We believe that requiring the Secretary to maintain a central file on Indian child placements will better enable the Secretary to carry out his trust responsibility, especially when judgment funds are to be distributed.

However, we object to the provisions of section 302(c), which would require the Secretary to present any proposed revision or amendment of rules and regulations promulgated under that section to both Houses of Congress. Any such proposed revision or amendment would be published in the Federal Register and we believe that placing this additional responsibility on the Secretary is both burdensome and unnecessary.

We believe that section 401 of Title IV should be amended to read as follows:

> Sec. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.
>
> (b) The Secretary is authorized and directed to prepare and submit to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within one year from the date of this Act, a report on the feasibility of providing Indian children with schools located near their homes. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program, and that enactment of the House subcommittee's present version of H.R. 12533 would not be consistent with the Administration's objectives.

Sincerely,

Forrest J. Gerard

Assistant Forrest J. Gerard
SECRETARY

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

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MAY 23 1978

Honorable Morris K. Udall
Chairman, Committee on Interior
  and Insular Affairs
House of Representatives
Washington, D.C.   20515

Dear Mr. Chairman:

We would like to take this opportunity to comment on the House Subcommittee on Indian Affairs version of S.1214, the "Indian Child Welfare Act of 1978".

As you know, the Department presented at some length its views on one constitutional issue raised by S.1214 as it passed the Senate in a letter to you dated February 9, 1978. 1/ Briefly, that constitutional issue concerned the fact that S.1214 would have deprived parents of Indian children as defined by that bill of access to State courts for the adjudication of child custody and related matters based, at bottom, on the racial characteristics of the Indian child. We express in that letter our belief that such racial classification was suspect under the Fifth Amendment and that we saw no compelling reason which might justify its use in these circumstances. This problem has been, for the most part, eliminated in the Subcommittee draft, which defines "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe."

We are still concerned, however, that exclusive tribal jurisdiction based on the "(b)" portion of the definition of

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1/ The views expressed in that letter were subsequently presented to the Subcommittee on Indian Affairs and Public Lands of your House committee in testimony by this Department on March 9, 1978.

"Indian child" may constitute racial discrimination. So long as a parent who is a tribal member has legal custody of a child who is merely eligible for membership at the time of a proceeding, no constitutional problem arises. Where, however, legal custody of a child who is merely eligible for membership is lodged exclusively with non-tribal members, exclusive tribal jurisdiction can not be justified because no one directly affected by the adjudication is an actual tribal member. We do not think that the blood connection between the child and a biological but non-custodial parent is a sufficient basis upon which to deny the present parents and the child access to State courts. This problem could be resolved either by limiting the definition of Indian child to children who are actually tribal members or by modifying the "(b)" portion to read, "eligible for membership in an Indian tribe and is in the custody of a parent who is a member of an Indian tribe."

A second constitutional question may be raised by §101(e) of the House draft. That section could, in our view, be read to require federal, State and other courts to give "full faith and credit" to the "public acts, records and judicial proceedings of any Indian tribe applicable to Indian child placements" even though such proceedings might not be "final" under the terms of this bill itself. So read, the provision might well raise constitutional questions under several Supreme Court decisions. E.g., Halvey v. Halvey, 330 U.S. 610 (1947). We think that problem can be resolved by amending that provision to make clear that the full faith and credit to be given to tribal court orders is no greater than the full faith and credit one State is required to give to the court orders of a sister State.

A third and more serious constitutional question is, we think, raised by §102 of the House draft. That section, taken together with §§103 and 104, deals generally with the handling of custody proceedings involving Indian children by State courts. Section 102 establishes a fairly detailed set of procedures and substantive standards which State courts would be required to follow in adjudicating the placement of an Indian child as defined by §4(4) of the House draft.

As we understand §102, it would, for example, impose these detailed procedures on a New York State court sitting in Manhattan where that court was adjudicating the custody of an Indian child and even though the procedures otherwise applicable in this State-court proceeding were constitutionally sufficient. While we think that Congress might impose such requirements on State courts exercising jurisdiction over reservation Indians pursuant to Public Law No. 83-280, we are not convinced that Congress' power to control the incidents of such litigation involving non-reservation Indian children and parents pursuant to the Indian Commerce Clause is sufficient to override the significant State interest in regulating the procedure to be followed by its courts in exercising State jurisdiction over what is a traditionally State matter. It seems to us that the federal interest in the off-reservation context is so attenuated that the Tenth Amendment and general principles of federalism preclude the wholesale invasion of State power contemplated by §102. See Hart, The Relations Between State and Federal Law, 54 Colum. L. Rev. 489, 508 (1954). 2/

Finally, we think that §101(b) of the House draft should be revised to permit any parent or custodian of an Indian child or the child himself, if found competent by the State court, to object to transfer of a placement proceeding to a tribal court. Although the balancing of interests between parents, custodian, Indian children and tribes is not an easy one, it is our view that the constitutional power of Congress to force any of the persons described above who are not in fact tribal members to have such matters heard before tribal courts is questionable under our analysis of §102 above and the views discussed above in regard to §4(4).

II. Non-Constitutional Problems

There are, in addition, a number of drafting deficiencies in the House draft. First, we are concerned about some language used in §§2 and 3 regarding "the Federal responsibility for the care of the Indian people" and the "special responsibilities and legal obligations to American Indian people." The use of such language has been relied on by at least one court

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2/ We note that we are aware of no Congressional findings which would indicate the inadequacy of existing State-court procedures utilized in these custody cases, even assuming that such findings would strengthen Congress' hand in this particular matter. As a policy matter, it is clear to us that the views of the States should be solicited before Congress attempted to override State power in this fashion, a position this Department took in testimony before the Senate Select Committee on Indian Affairs on S.J. Res. 102 on February 27, 1978.

to hold the federal government responsible for the financial support of Indians even though Congress has not appropriated any money for such purposes. *White* v. *Califano*, 437 F. Supp. 543 (D.S.D. 1977). We fear the language in this bill could be used by a court to hold the United States liable for the financial support of Indian families far in excess of the provisions of Title II of the bill and the apparent intent of the drafters.

Second, §101(a) of the House draft, if read literally, would appear to displace any existing State court jurisdiction over these matters based on Public Law No. 83-280. We doubt that is the intent of the draft because, *inter alia*, there may not be in existence tribal courts to assume such State-court jurisdiction as would apparently be obliterated by this provision.

Third, the apparent intent of §4(10) is, in effect, to reestablish the diminished or disestablished boundaries of Indian reservations for the limited purpose of tribal jurisdiction over Indian child placements. We think that such reestablishment, in order to avoid potential constitutional problems, should be done in a straightforward manner after the reservations potentially affected are identified and Congress has taken into account both the impact on the residents of the area to be affected and any other factors Congress may deem appropriate.

The Office of Management and Budget has advised that there is no objection to the presentation of this letter and that enactment of the House Subcommittee on Indian Affairs version of S.1214 would not be consistent with the Administration's objectives.

Sincerely,

Patricia M. Wald

Patricia M. Wald
Assistant Attorney General

Mr. RONCALIO. This bill provides for the placement of Indian children in appropriate foster and adoptive homes when placement becomes necessary and insures that the person making such determination is either indigenous to the Indian community or has respect and understanding of the values of the Indian community of the child in question.

I want to commend my colleague, Jim Abourezk, for his work on this bill. I hope I can work with him when we are both out of the Congress next year, too.

We have counsel with us from the Senate committee, and the witness list is long.

We will begin, without further ado, by calling Mr. Rick Lavis.

[Prepared statement of Hon. Rick Lavis may be found in the appendix.]

STATEMENT OF RICK LAVIS, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY TED KRENZKE, DIRECTOR, OFFICE OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS; RAY BUTLER, DIRECTOR, DIVISION OF SOCIAL SERVICES, BUREAU OF INDIAN AFFAIRS; CLAIRE JERDONE, CHILD WELFARE SPECIALIST, BUREAU OF INDIAN AFFAIRS; AND DAVE ETHRIDGE, ATTORNEY, SOLICITOR'S OFFICE

Mr. LAVIS. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity to appear before the subcommittee today to present the Interior Department's testimony on S. 1214, "The Indian Child Welfare Act of 1977."

We agree that too often Indian children have been removed from their parents and placed in non-Indian homes and institutions. We also agree that the separation of an Indian child from his or her family can cause that child to lose his or her identity as an Indian, and to lose a sense of self-esteem which can, in turn lead to the high rates among Indian children of alcoholism, drug abuse, and suicide.

However, we do not believe that S. 1214, in its present form, is the vehicle through which the Congress should seek to remedy this situation. Therefore, the administration opposes enactment of S. 1214 as passed by the Senate and we ask the committee to defer consideration of the bill until such time as we have completed preparation of substitute legislation. We have already given the issue considerable thought, and we hope to have our substitute ready for submission by early March.

Title I of S. 1214 would establish child placement jurisdictional lines and standards. Although title I incorporates many child placement safeguard provisions that we believe are necessary, the administrative problems that would arise were that title in its present form to be enacted, do not allow us to support it. If this bill is enacted, before any State court judge can proceed with a child placement, a determination must be made as to whether the child before the court is an Indian. The bill contains no definition of the term "Indian child."

Mr. RONCALIO. Is anybody in the audience not able to hear? We will turn the PA system up.

Mr. **Conklin**. The witness does not need to turn it on.

Mr. **Roncalio**. What does the witness need to do, just talk?

Mr. **Conklin**. Yes, Mr. Chairman.

Mr. **Lavis**. We are assuming, however, that an Indian child is a person under 18 who is an Indian, rather than a child of an Indian.

To determine whether the child is an Indian, the judge must determine whether the child is a member of an Indian tribe, which we concede is not overly burdensome on the court, or whether the child is eligible for membership in an Indian tribe. The standards for membership in Indian tribes vary from tribe to tribe. Even if the court familiarizes itself with all these standards, it will also be necessary to examine the blood lines of the child.

Title I also is unclear in its use of the term "child placement." A child placement, according to the definition in section 4(h) includes any private action under which the parental rights of the parents or the custodial rights of an extended family member are impaired. Does this include the case where the mother of an Indian child freely asks a relative to take over the care of her child? Should not these be private actions not subject to invasion by outside parties? The definition of the term child placement remains unclear and the difficulty it has caused in discussion of this bill would be multiplied in the enforcement of the bill.

Another serious problem we have with title I of the bill is that the interest of the tribe seems to be paramount, followed by the interest of the biological parents of the Indian child. Nowhere is the best interest of the child used as a standard. Although the tribe is allowed to intervene in placements of children off the reservation as an interested party, nowhere is the child afforded the opportunity to be represented by counsel or even to be consulted as to where he or she wishes to be placed.

Certainly an adolescent should have a right to have his or her preference seriously considered by the court, especially in the case where the child is not living on the reservation.

The amount of notice that must be given before a child can be removed from the home also does not reflect the best interest of the child. Unless a determination is made that the "physical or emotional well-being of the child is immediately and seriously threatened," the parents must be given 30 days' notice before a child can be removed. There are no provisions in the bill allowing this notice to be waived by the parents. Thus, even in the case where the parent consents to the placement, and perhaps even welcomes it, the proceeding cannot begin until 30 days after notification of the parent.

We also recognize the potential this bill has of seriously invading the rights to privacy in the case of the parent of an off-reservation child who is the subject of a child placement. Under the provisions of section 102(c), if the State court determines that an Indian child living off the reservation has significant contacts with a tribe, that tribe must be notified of the proceeding, allowed to intervene as an interested party, and in some cases the proceeding must be transferred to the tribal court of that tribe.

Thus, even in the case of an unwed Indian mother living in an urban setting far from the reservation who does not wish the members of the tribe to know she has had a child, the interests of the individual are overlooked in deference to the interests of the tribe.

We are troubled by a requirement that without regard to the consent of the parents the child of one who has chosen a life away from the reservation must return to the reservation for a placement proceeding.

Although these are just a few of many problems we believe the enactment of this bill would create, we do not mean to imply by this testimony that the special problems of Indian child welfare should be ignored. We simply believe that the bill, as it is written, is cumbersome, confusing, and often fails to take into consideration the best interests of the Indian child.

As regards title II of the bill, we believe that it also needs to be rewritten. The Secretary of the Interior already possesses many of the authorities contained in title II. Our principal concern with the title, however, is that the Secretary of the Interior would be granted certain authorities that are now vested in the Secretary of Health, Education, and Welfare. We are unclear which Department would be required to provide what services; and we would be hesitant, without an increase in manpower and money, to assume responsibilities for providing services which are now being provided by the Department of Health, Education, and Welfare.

We have no objections to titles III and IV of the bill. We would suggest, however, that title III include the requirement that the Secretary of the Interior review the records compiled when preparing per capita judgment fund distribution roles to determine whether any of the placed children are entitled to share.

As I stated earlier, the administration proposes to offer substitute language for the bill. We recognize the urgency of addressing the problems of Indian child welfare in a timely manner. Therefore, we hope to present our substitute to the committee by early March.

This concludes my prepared statement. I will be glad to respond to any questions the committee has.

Mr. Roncalio. I have no questions.

Mr. Runnels?

Mr. Runnels. No questions, Mr. Chairman.

Mr. Roncalio. Do any of the staff have questions?

[No response.]

Mr. Roncalio. Thank you very much.

Mr. Lavis. Thank you, Mr. Chairman.

Mr. Roncalio. You realize that we are anxious to have you give us a draft on that, and we hope it will not be later than you say it will be.

Mr. Lavis. Yes, sir.

Mr. Roncalio. The next witness is Dr. Blandina Cardenas.

We are happy to have you here this morning.

Dr. Cardenas, I notice the statement is fairly long. If you want to read it, that is all right with us, but if you want us to insert it in the record and then just highlight it, you are welcome to do so.

[Prepared statement of Hon. Blandina Cardenas may be found in the appendix.]

STATEMENT OF DR. BLANDINA CARDENAS, COMMISSIONER FOR THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES; ACCOMPANIED BY JIM PARHAM, DEPUTY ASSISTANT SECRETARY, OFFICE OF HUMAN DEVELOPMENT SERVICES; AND FRANK FERRO, CHIEF, CHILDREN'S BUREAU, ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Dr. CARDENAS. We will be happy to have it put in the record.

Mr. RONCALIO. You have Mr. Parham and Mr. Frank Ferro with you?

Dr. CARDENAS. Yes.

Mr. RONCALIO. Thank you.

Dr. CARDENAS. Chairman Roncalio and members of the subcommittee: My name is Blandina Cardenas, and I am responsible for the Administration for Children, Youth and Families in the Department of Health, Education, and Welfare.

I am particularly pleased to participate in your hearing this morning, because it touches on a subject about which I have strong feelings: namely, the ability of our varied child welfare services to meet the needs of minority children.

I know that much time and careful consideration has gone into the preparation of S. 1214. I am particularly grateful for the cooperative spirit in which staff of the relevant subcommittees have worked with individuals at HEW. It has convinced me that however we might differ on details, we share the same goals. I am also appreciative of the fact that the Department has been invited to comment, even though HEW would not have primary responsibility for administering the provisions of this bill.

The legislation that is the subject of this morning's hearing has caused us to do some hard thinking about our role in relation to the child welfare services available for Indian children and their families. I wish I could tell you that we have definitive answers so what that role should be. What I have to say instead is that we find ourselves in agreement about the goals and impressed by the thoughtful deliberation that has gone into S. 1214, but we have some questions about the approach represented by S. 1214 and are taking a close look at how we could make existing HEW programs more responsive to Indians.

I realize that your hearings this morning reflect the subcommittee's willingness to hear all sides, and I would hope that we could continue to work together to sort out these very difficult issues.

During the Senate Select Committee's hearings last August 4, the Department testified that provisions of the bill which would provide funds for Indian children in need of child welfare services and establish certain procedures in Indian child welfare proceedings before State courts and tribal courts are, in fact, goals worth attaining—especially in light of the detailed findings of a recent study conducted by authority of HEW on the state of Indian child welfare.

However, we were of the opinion at the time that the administration's child welfare initiative, embodied in S. 1928, would be a more appropriate legislative vehicle for addressing the specific needs of

Indian children. While the Department feels that more needs to be done to make child welfare services more adequately address the needs of Indian children, we continue to have great concern about the provisions contained in S. 1214.

The Department's previous testimony pointed out our commitment to determine the best way to optimize the impact of HEW programs for Indian people. That commitment continues to be firm.

The Department promised the members of the Select Committee on Indian Affairs that we would work to secure changes that would make H.R. 7200 more responsive to the special needs of Indian children. We have worked, with the assistance of the committee's very able staff, and fulfilled our promise to help secure meaningful changes to H.R. 7200. That bill which is now on the Senate calendar, contains two provisions that should have significant implications for Indian child welfare services.

First, the bill provides that the decisions of Indian tribal courts on child custody matters be given full faith and credit by State courts. Second, the bill authorizes the Secretary of Health, Education, and Welfare, at his discretion, to make direct grants to Indian groups for the delivery of services to children and their families under title IV–B of the Social Security Act.

While the Department continues to feel that the administration's child welfare initiative, and specifically the two changes directly related to Indians, would improve the system of Indian child placements, we agree that more needs to be done.

We feel that the existence of legal and jurisdictional barriers to the delivery of services by State and county systems warrants a closer look at how these programs can become more responsive to Indians as well as other citizens, rather than creating programs that might duplicate existing authorities and have the potential of disrupting funds now provided to Indians under these and other HEW programs.

The National Tribal Chairman's Association and four other groups are now conducting a project to explore the desirability of amending the Social Security Act or alternative steps to more effectively provide social services for Indians. That project is being funded at more than one-quarter of $1 million, and will also draft a tentative implementation plan.

The 1974 hearings before the Senate Select Committee on Indian Affairs made us more cognizant of the special needs and problems of Indians in trying to maintain family and tribal ties for their children. The Department has responded to the need to increase the level of understanding and knowledge of Indian child welfare problems and has caused us to reexamine how we might more effectively channel assistance to tribal governments through its existing authorities.

Recently, the Department reported on a 2-year, state-of-the-field survey of Indian child welfare services needs and service delivery. The survey examined the activities and policies of 21 States, and tried as well to review the training and employment opportunities for Indian professionals in child welfare.

The survey pointed to several of the factors that remain of concern to members of this subcommittee as well as others interested in the field, and to HEW.

First, the need to support increased involvement by tribal governments and other Indian organizations in the planning and delivery of child-welfare-related services.

Second, the need to encourage States to deliver services to Indians without discrimination and with respect for tribal culture.

Third, the need for trained Indian child welfare personnel.

Fourth, the need to resolve jurisdictional confusion on terms that will eliminate both the most serious gaps in service and the conflicts between State, Federal, and tribal governments that leave too many children without needed care.

And, finally, the need to assure that insensitivity to tribal customs and cultures is not permitted to result in practices where the delivery of services weaken rather than strengthen Indian family life.

At the same time, we are moving ahead with targeted efforts to assist tribes. We are providing technical assistance to aid the governing bodies of recognized Indian groups in the development and implementation of tribal codes and court procedures with relevance for child abuse and neglect. Under this 2-year project, training and technical assistance will be provided to from 10 to 20 Indian reservations.

Five projects are now being conducted to demonstrate methods by which Indian organization could deliver social services to Indian children and families.

Similar efforts will focus specifically on the delivery of child welfare services in Public Law 280 States, the design of day care standards appropriate to Indian children living on reservations.

All of these activities, including those that are still being put into operation, are intended to reflect the Department's belief that Indian child welfare services must be based not only on the best interests of the child and support for the family unit—however that may be defined—but also on a recognition of the need to involve Indians themselves in the provision of services.

While the Department supports the goals of S. 1214, we have several concerns with the bill and oppose its enactment. We understand that the Department of the Interior is preparing a substitute bill, and we would like to continue to work with the subcommittee in the development of a substitute bill.

Our concerns focus on the following:

First, the bill would seem to move in the direction of separate social services for Indians, on terms that may imply that State governments are no longer responsible for their Indian citizens. We are reluctant to tamper with the existing system in ways that run the risk of disrupting services now being provided to Indian children on and off reservations, or jeopardizing the full availability to Indian children of services intended for all children.

While we do not believe it is the intent of this legislation, or of those who have worked so hard on it, we think it would be unfortunate if the adoption of this legislation should lead to a cutback in State services to which Indian families are now entitled.

Mr. **Roncalio**. Let me ask you a question now, and that is: Were those concerns expressed in the Senate before they passed their bill?

Dr. **Cardenas**. Yes.

Mr. **Roncalio**. And they passed it nevertheless?

Dr. **Cardenas**. Yes.

Mr. Roncalio. Do you anticipate working with the Indian Affairs people who just testified on the amendments?

Dr. Cardenas. Yes.

Mr. Roncalio. I am going to ask Congressman Runnels to chair for 5 minutes, because we have an emergency on the Sioux bill. I will be back in 5 minutes.

Mr. Runnels [presiding]. I will do it from here.

Mr. Roncalio. I will be back in 5 minutes.

Dr. Cardenas. A second concern of the Department is the need to assure that there is a match between the capability of Indian tribes and organizations to administer S. 1214, and the responsibilities they would assume. For example, the bill provides for the assumption of judicial responsibilities as well as the administration of social welfare agencies or "Indian Family Development Centers."

Because of past and present practices, Indian tribes have had little opportunity to acquire expertise in the development and administration of social welfare programs. Many HEW funding sources, for example, are tied to the provision of specific services designated in legislation, and are not generally available for designing and developing new service delivery capabilities. While some of our developmental and demonstration authorities have been used for these purposes, we are not confident that there has been enough time for them to make the difference that a bill such as this would require.

A third concern of the Department is the likelihood that S. 1214 discriminates in an unconstitutional fashion against Indians living off the reservation, who are not members of a tribe, by restricting access to State courts in the adjudication of child welfare matters. Indians residing on reservations, who are members of the tribe, can come under the exclusive or concurrent jurisdiction of tribal authority. However, with respect to nonmembers and Indians living off the reservation, there is some question as to whether the tribal courts can exert jurisdiction over these persons. Section 102(c) of the bill establishes procedures that courts must follow in considering cases involving Indian children who reside off the reservation. Indian tribes must be provided notice of the right to intervene in the proceeding, and are granted authority on a case-by-case basis to request the transfer of jurisdiction if they maintain tribal courts.

Our concern is that parents, particularly those of mixed backgrounds who may have few tribal contacts, will be compelled to fight for the custody of their children in perhaps distant and unfamiliar surroundings. This could represent a heavy emotional burden on the parent or parents, and an economic one as well. And it would be detrimental to the child to require that he or she be placed in a tribal setting if his or her only home has been in an off-reservation setting.

In this as in any other program for which the Federal Government shares responsibility, there will be a need for some mechanism to provide ongoing evaluation. Such evaluation data should help us better judge how changes like those being proposed are working, and how, or whether, they might be modified in the future.

One final issue is of concern to the Department.

We are concerned that the adoption process could be seriously affected by section 101(c), which permits final adoption decrees to be set aside at any time if it can be shown that the adoption did not comply with the requirements of the bill. The uncertainty that such a provision could create in the minds of persons wishing to adopt children might make them reluctant to become adoptive parents.

Mr. Chairman, we do wish to point out that the Department is supportive of section 102(a) of the bill, which gives tribal courts jurisdiction over child placement matters affecting Indian children who reside on a reservation. However, we do not support section 102(c), which extends this coverage to children who do not reside on a reservation. The Department is also generally supportive of the provisions that require that notice of a child placement proceeding in State courts be provided to the family and tribe of the child.

Mr. RONCALIO [presiding]. Why do you feel that way, because of the basic jurisdiction of the court itself?

Dr. CARDENAS. Absolutely.

The Department feels that the goals of S. 1214 are laudable, but we continue to believe that we have an obligation to see them achieved within the framework of existing programs.

We realize that such a posture places major responsibility with us, to see that we are more effective in the administration of existing programs, and that services in fact serve Indian children and their families.

We have been grateful for the cooperative spirit shown by the staffs of both the House and Senate subcommittees in working with us as they developed this legislation. We hope that spirit of cooperation will continue—whether in the context of this legislation or existing programs—to insure that the needs of Indian children and their families will, indeed, be met.

That concludes my testimony, Mr. Chairman.

Mr. RONCALIO. That is a very good statement. I commend you on it. Do you have questions, Mr. Runnels?

Mr. RUNNELS. Thank you, Mr. Chairman.

Dr. Cardenas, let me make sure I understand. In your testimony you are against enactment of this bill as presently written?

Dr. CARDENAS. That is right.

Mr. RUNNELS. First, in your opinion, the bill would seem to move in the direction of separate social services for Indians?

Dr. CARDENAS. That is correct.

Mr. RUNNELS. Second, I think you say that you have a concern because there is a match between the capability of Indian tribes and the organization to administer the bill?

Dr. CARDENAS. If I could clarify that, sir, we are not in the business of blaming, but we do think we do need to put in place a number of efforts, and we have put in place a number of efforts to, in fact, improve and enhance the capability of Indian tribes and the organizations to administer such a program, and we hope to carry on those efforts.

Mr. RUNNELS. Third, the Department has a concern because you think it is unconstitutional with respect to Indians living off the reservation.

Dr. CARDENAS. We have been advised on that, and I am not a constitutional lawyer, but we understand an opinion is being sought on that issue.

Mr. **Runnels.** Is it your opinion that, working with the subcommittee and the staffs, a more adequate situation could be developed, rather than the enactment of this bill?

Dr. **Cardenas.** Absolutely, sir, and we would want to insure that by a number of procedures, and the programs we now have in place as well, that we can progress.

Mr. **Runnels.** You will submit your recommendations to the committee in writing?

Dr. **Cardenas.** Yes.

[Editor's note.—When received, the information will be placed in the committee's files.]

Mr. **Runnels.** Thank you, Mr. Chairman.

Mr. **Roncalio.** The gentleman from Colorado.

Mr. **Johnson.** No questions.

Mr. **Roncalio.** I have a profound respect for my counterpart in the Senate, Jim Abourezk, and, if we depart from what he thinks is a good bill, the burden of proof will be of those who want the change.

So if you and the BIA people want changes in the text, I will look forward to receiving them, but I think the burden of proof will rest on you folks who want the changes made.

That is only my opinion, however, and not the committee's.

Then the observation that the tribes may not have the capacity for administering the services, they are surely getting basic appropriations annually for foster care and family development.

Each of the tribes under the 1977 appropriations bill is getting some money.

We thank you very, very much.

Dr. **Cardenas.** Thank you.

Mr. **Roncalio.** Does the staff have questions?

Mr. **Taylor.** Yes.

I understand, Dr. Cardenas, that you are willing to work with the Bureau of Indian Affairs and the staffs of the House and Senate committees to develop this further?

Dr. **Cardenas.** We look forward to continuing to work with the staffs of both committees and the BIA.

Mr. **Taylor.** I have no further questions.

Mr. **Roncalio.** Thank you very much.

Dr. **Cardenas.** Thank you, Mr. Chairman.

Mr. **Roncalio.** The next panel will be Chief Calvin Isaac, Mississippi Band of Choctaws.

Are you here, sir?

Chief **Isaac.** Yes; I am here, sir.

Mr. **Roncalio.** Goldie Denny, director of social services, Quinault Nation, for the National Congress of American Indians.

And LeRoy Wilder, attorney, with the firm of Fried, Frank, Harris, Shriver & Kampelman.

Since I am leaving Congress at the end of the year I have been looking at the names of law firms.

[Laughter.]

Mr. **Roncalio.** We look forward with more than ordinary interest in what you three have to say about this legislation that is before us.

You may proceed any way you would like, introduce your statements verbatim and comment on them, or any way you would like.

[Prepared statement of Calvin Isaac may be found in the appendix.]

PANEL CONSISTING OF: CHIEF CALVIN ISAAC, MISSISSIPPI BAND OF CHOCTAW INDIANS, REPRESENTING NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION; GOLDIE DENNY, DIRECTOR OF SOCIAL SERVICES, QUINAULT NATION, REPRESENTING NATIONAL CONGRESS OF AMERICAN INDIANS; AND LeROY WILDER, ATTORNEY, REPRESENTING ASSOCIATION OF AMERICAN INDIAN AFFAIRS

Chief ISAAC. Mr. Chairman and members of the committee, I am Calvin Isaac, tribal chief of the Mississippi Band of Choctaw Indians and a member of the National Tribal Chairmen's Association. Thank you for asking NTCA to appear before you today.

I testified before the Senate Select Committee on Indian Affairs last year on the importance to the Indian tribal future of Federal support for tribally controlled educational programs and institutions. I do not wish to amend anything I said then, but I do want to say that the issue we address today is even more basic than education in many ways.

If Indian communities continue to lose their children to the general society through adoptive and foster care placements at the alarming rates of the recent past, if Indian families continue to be disrespected and their parental capacities challenged by non-Indian social agencies as vigorously as they have in the past, then education, the tribe, Indian culture have little meaning or future.

This is why NTCA supports S. 1214, the Indian Child Welfare Act.

Our concern is the threat to traditional Indian culture which lies in the incredibly insensitive and oftentimes hostile removal of Indian children from their homes and their placement in non-Indian settings under color of State and Federal authority.

I shall now move to page 4 of our written testimony, the second paragraph.

Mr. RONCALIO. All right.

Chief ISAAC. The ultimate responsibility for child welfare rests with the parents and we would not support legislation which interfered with that basic relationship. What we are taking about here is the situation where government, primarily the State government, has moved to intervene in family relationships. S. 1214 will put governmental responsibility for the welfare of our children where it belongs and where it can most effectively be exercised. that is, with the Indian tribes. NTCA believes that the emphasis of any Federal child welfare program should be on the development of tribal alternatives to present practices of severing family and cultural relationships.

The jurisdictional problems addressed by this bill are difficult, and we think it wise to encourage the development of good working relationships in this area between the tribes and nontribal governments whether through legislation, regulation, or tribal action. We would not want to create a situation in which the anguish of children and parents are prolonged by jurisdictional fights. This is an area in which the child's welfare must be primary.

The proposed legislation provides for the determination of child placements by tribal courts where they exist and have jurisdiction. We would suggest, however, that section 101 of the bill be amended to provide specifically for retrocession at tribal option of any preexisting tribal jurisdiction over child welfare and domestic relations which may have been granted the States under the authority of Public Law 280.

Mr. Roncalio. May I ask a question about that, sir?

Chief Isaac. Yes, sir.

Mr. Roncalio. The reason I have to ask it is that I do not know the meaning of the word "retrocession."

Does that mean going back to rewrite a court order giving temporary custody of a child?

Mr. Wilder. If I may clarify that, we are requesting an affirmative jurisdiction to States, by virtue of Public Law 280, we are allowing the tribes to go back and retrocess that.

Mr. Roncalio. Would you draft language on that?

Mr. Wilder. That is in the bill.

Mr. Roncalio. You are suggesting that section 101 be amended to provide this. So obviously it is not in the bill now. Or something is wrong.

Mr. Wilder. I am sorry, Mr. Chairman, I was not paying close enough attention. Strike what I said.

Mr. Roncalio. All right.

Go ahead.

Chief Isaac. The bill would accord tribes certain rights to receive notice and to intervene in placement proceedings where the tribal court does not have jurisdiction or where there is no tribal court. We believe the tribe should receive notice in all such cases but where the child is neither a resident nor domiciliary of the reservation, intervention should require the consent of the natural parents or the blood relative in whose custody the child has been left by the natural parents. It seems there is a great potential in the provisions of section 101(c) for infringing parental wishes and rights.

There will also be difficulty in determining the jurisdiction where the only ground is the child's eligibility for tribal membership. If this criterion is to be employed, there should be a further required showing of close family ties to the reservation. We do not want to introduce needless uncertainty into legal proceedings in matters of domestic relations.

There are several points with regard to placement proceedings on which we would like to comment. Tribal law, custom, and values should be allowed to preempt State or Federal standards where possible. Thus, we underscore our support for the provision in section 104(d) that the section is not to apply where the tribe has enacted its own law governing private placements. Similarly, the provision in section 102(b) stating that the standards to be applied in any proceeding under the act shall be the standards of the Indian community is important and should be clarified and strengthened.

The determination of prevailing community standards can be made by a tribal court where the court has jurisdiction. Where the tribal court is not directly involved, the bill should make clear that the tribe has the right as an intervenor to present evidence of community standards. For cases in which the tribe does not intervene reasonable provisions could be devised requiring a nontribal court to certify questions of community standards to tribal courts or other institutions for their determination.

The presumption that parental consent to adoption is involuntary if given within 90 days of the birth of the child should be modified to provide an exception in the case of rape, incest, or illegitimacy. There appears to be no good reason to prolong the mother's trauma in such situations.

Section 103 establishes child placement preferences for nontribal agencies. Most importantly, the bill permits the tribe to modify the order of preference or add or delete categories. We believe the tribes should also be able to amend the language of the existing preferences as written. The bill should state more clearly that nontribal agencies are obliged to apply the tribally determined preferences.

The references in section 103 to "extended Indian family" should be amended to delete the word "Indian." The scope of the extended family should be determined in accord with tribal custom but placement should not be limited only to Indian relatives.

S. 1214 provides that upon reaching the age of 18, an Indian adoptive child shall have the right to know the names and last known address of his parents and siblings who have reached the age of 18, and their tribal affiliation. The bill also gives the child the right to learn the grounds for severance of his or her family relations. This provision should be deleted. There is no good cause to be served by revealing to an adoptive child the grounds for the severance of the family relationship, and it is bad social practice. This revelation could lead to possible violence, legal action, and traumatic experiences for both the adoptive child and his adoptive and natural family.

Mr. RONCALIO. You do not object to the right to find out who his siblings and parents are?

Chief ISAAC. We do not object to that part.

Mr. RONCALIO. I agree with you 100 percent.

Chief ISAAC. Further, we do not believe it is good practice to give the adoptive child the right to learn the identity of siblings. This could result in unwarranted intrusion upon their rights and disruption of established social situations. In general, we recommend that the rights provided in section 104 not be granted absolutely, but rather that individual tribes be permitted to legislate on this question in accord with their custom.

Mr. RONCALIO. That is awfully difficult to do in a national law governing all the tribes. We will surely take a look at it and see what we can come up with, though.

Was this exactly the same statement you gave on the Senate side on the same legislation?

Chief ISAAC. Yes, sir.

Mr. RUNNELS. I believe I was informed that this has been deleted on the bill. His testimony was evidently prepared on an old copy.

Mr. RONCALIO. That is not in the Senate bill now?

Ms. MARKS. No; that has been deleted, and section 280 has been added to the bill.

Mr. RUNNELS. I wanted to clarify the record.

Excuse me, Mr. Chairman.

Mr. RONCALIO. I am happy to be straightened out.

Chief ISAAC. I think these are the major points we wanted to emphasize; and that would conclude our testimony.

Mr. RONCALIO. Thank you.

Do any of the rest of you have anything to add?

You have a separate statement? Fine.

Mr. JACKSON. Mr. Chairman.

Mr. RONCALIO. Yes, Mr. Jackson.

Mr. JACKSON. Mr. Isaac, on page 7 of your testimony, in the third paragraph, it seems like you have two statements which are contradictory.

The first says: "S. 1214 provides that upon reaching the age of 18, an Indian adoptive child shall have the right"—excuse me. I misread your testimony.

Mr. TAYLOR. That is the section in the existing bill that was changed so it now reads that the child shall be able to obtain the information necessary to assert his tribal affiliation, and in the section-by-section analysis it is pointed out that, if the information supplied by the court, short of the names and addresses of the natural parents, are not sufficient to qualify him, then he would be entitled to return to the court and seek that information.

Mr. RONCALIO. But not the information on the basis of the separation?

Mr. TAYLOR. No.

Mr. RONCALIO. So the objections you have, have been met in the Senate bill.

Ms. DENNY. Mr. Chairman and members of the committee, my name is Goldie Denny.

Let me first speak for the National Congress of American Indians, and then I will follow that as a person who is out in the real world as director of social services on the Indian reservation of the Quinault Tribe in the State of Washington.

Honorable members of the committee, the National Congress of American Indians, representing 141 tribes throughout the United States, thanks you for this opportunity to testify on S. 1214.

At the 1977 convention of the NCAI held in Dallas, Tex., the general assembly voted unanimously to continue to support this very important and long-overdue piece of legislation along with a few recommendations which will be included at the end of this statement.

It has been just over 3 years since the Senate held oversight hearings on Indian child welfare in December 1974. It has taken that long to get to the important phase of rectifying the numerous situations which have created the shameful destruction of Indian families in the past and which continue to the present time.

There are no viable alternatives to the passage of S. 1214 to remedy the current situation. No practical actions of any relevance have been taken by any Federal or State agencies or court systems to alleviate the socially undesirable practices identified in the 1974 Senate Indian child welfare oversight hearings.

S. 3777 introduced in 1976, and further documented by the American Policy Review Commission report, AIPRC, studies conducted by the Department of Health, Education, and Welfare and the Denver Research Institute have consistently demonstrated the necessity for legislative action to halt the wholesale abduction of Indian children from their family and culture. There can remain no doubt in anyone's mind that these practices have had destructive effects on Indian family and tribal life. As long as the status quo remains, Indian families will continue to lose children.

Because of the unique legal trust status relationship that exists between Indian tribes and the Federal Government, it is the responsibility of this committee to support the legislative protection set forth in S. 1214.

Public and private agencies who now have the responsibility of providing child welfare services to Indian families have been content to allow these well documented and identified negative services to continue. S. 1214 addresses remedies to the fact that the Bureau of Indian Affairs has grossly neglected their responsibility in the preservation of Indian families. The BIA has done nothing to improve or change the problems testified to in 1974 and continue to promote the theory of acculturation and assimilation.

Every member tribe of the NCAI has had an opportunity to study and comment on S. 1214. Indian tribes have worked hard to promote this type of legislation. The BIA has repeatedly demonstrated that they can do little but choose to misinterpret the bill and cloud the issues with bureaucratic blockades. Indian self-determination is a concept that is a threat to the BIA. Their repeated resistance to this legislation is a clear example of the irresponsibility of that agency to act within the best interest of Indian families. Until such time that the BIA can demonstrate some responsible and sincere concern for the welfare of Indian children, the NCAI requests that this House committee listen to the Indian people's testimony rather than our "trustee" who has little or no real knowledge of the problem.

General child welfare legislation, no matter how well meaning, does not address the unique legal, cultural status of Indian people. Rather, they tend to promulgate the existing problems. One of the major barriers is the present funding mechanisms which allow direct funding to States only for provision of service to Indians. Very few services are actually delivered to Indian people and the negative child welfare services provided by State and county welfare workers have resulted in the problems outlined in this bill. The NCAI continues to go on record as supporting the concept that child welfare services to Indian families can best be provided by Indians.

We are aware that some Members of the House of Representatives are presently challenging the rights of tribal governments and treaty rights which have been part and parcel of the U.S. Constitution, and as such are sacred rights. However, we are asking that House committee members today put aside any negative philosophical and political considerations that may exist and concentrate on the basic intent of S. 1214 which is to remedy the destructive practices that have resulted in the breakdown of many Indian families.

We ask that you demonstrate your concern and compassion for children and families by supporting S. 1214. We ask that you make the future welfare of Indian children your paramount consideration in making your decision.

In conclusion, the fate of a relevant and practical solution to the damage being done to Indian children and their families is in the hands of the House of Representatives. We sincerely ask that you pass S. 1214 for which Indian people will be extremely appreciative. Your demonstrated respect for our children and family life will strengthen our faith in our Government's responsibility toward Indian children and families in particular, and in fact all children and families in the United States.

We offer these final specific recommendations. This is the concern we have of confidentiality. In the event a mother living off the reservation should desire that her tribe not be notified of her adoption plan, she should be able to petition a court to have the notification clause nullified. The court after hearing her case could rule on the basis of her testimony. However, there should be developed a method whereby the agency placing the child would be bound to the placement standards outlined in S. 1214. Some sort of monitoring system would necessarily have to be developed. This would protect the rights of the mother and the child. Perhaps we could explore confidential enrollment procedures. Could be a tribal option, et cetera.

The NCAI thanks you for listening to our testimony and will be happy to answer any questions you may have.

Mr. RONCALIO. We thank you for coming and giving us your testimony.

Has the BIA discussed this bill with the NCAI Child Welfare Committee?

Ms. DENNY. They have never approached us at any time to ask the opinions of the 141 tribes in the United States about this bill.

Mr. RONCALIO. I would say the two of you are not in other than what you might call polarized positions.

Is that a pretty good description?

Ms. DENNY. Yes.

I think in their statement they say they are going to rewrite this bill. At the Senate hearings, they promised to sit down with members of the NCAI and other Indian representatives and get some Indian input or some amendments to Senate bill 1928 at that time, and we had them prepared so that there would be something addressing the special status of Indian children.

They have failed to contact anybody or sit down and do anything about that particular piece of legislation, and their promise to rewrite this bill, I have no confidence in the Bureau's ability to write anything or draft anything that makes any sense, and I refer you to page 2 of their testimony. The part that says, "We are assuming, however, that the Indian child is a person under 19 who is an Indian rather than a child of an Indian."

I may be a dumb Indian, but I sure as hell don't know what that means.

[Laughter.]

Ms. DENNY. Mr. Chairman, I would like to talk as director of social services of the Quinault Nation, State of Washington.

I gave testimony at the Senate hearings citing the Quinault Tribe as a tribe that has been able in isolation to do the very things that are outlined in this bill.

Mr. **Roncalio.** Why do you not let us hear Mr. Wilder's statement first and complete the panel and come back to you.

Ms. **Denny.** All right.

Mr. **Roncalio.** We may have to go to the floor, too.

Mr. **Wilder.** Thank you, Mr. Chairman.

Mr. **Roncalio.** You can have your statement put in the record and comment on it.

Mr. **Wilder.** Yes; I am going to summarize my statement.

I will speak without the aid of the microphone. I feel strongly enough about this bill to speak loudly.

Mr. Chairman, members of the committee, my name is LeRoy Wilder. I am an associate attorney of the law firm Fried, Frank, Harris, Shriver, & Kampelman in Washington, D.C. I wanted to get that name.

Mr. **Roncalio.** Yes. And would you let Sargent Shriver know that I could not answer his phone call because I am here in a hearing?

Mr. **Wilder.** Yes. [Laughter.]

I am here today to present testimony in support of S. 1214 on behalf of the Association on American Indian Affairs, for which our law firm serves as general counsel. The association has worked extremely hard over the years to prevent the unwarranted breakup of Indian families and to bring into existence a law to protect the welfare of Indian children.

I would like to acknowledge in the hearing room Mr. Bill Beiler and Mr. Bertram Hirsch, people who have worked hard on this bill.

Before joining Fried, Frank, I was in practice in California and retained by the association to represent Indian families fighting attempts by nontribal agencies to remove their children. I am a member of the Karuk Tribe of California Indians and was raised in my ancestral homeland. I believe that I am qualified to speak in support of this bill on behalf of the association specifically and Indian families generally.

The need is unquestionable for an Indian child welfare bill such as that passed by the Senate last November and which is now before you. The Association on American Indian Affairs revealed to the Senate during oversight hearings in 1974 that an alarmingly high percentage, in some areas as high as 35 percent, of Indian children were being separated from their natural families through the actions of nontribal agencies.

In States where figures are available the association has found that adoptive and foster placement of Indian children occurs at rates up to 19 times greater than rates for non-Indian children. These placements, for the most part, are made into non-Indian homes.

The breakup of Indian families has been exacerbated by the absence of local day schools in many Indian communities and on many Indian reservations. Without convenient facilities available to them, many Indian families are forced to send their children to boarding schools.

On the Navajo Reservation, for example, nearly all of the grade school children are attending BIA schools. Of these, 94 percent must attend boarding schools. I urge each of you to read the article entitled, "Kid Catching," which is appended to this statement. It conveys the sense of loss Indian families suffer as the result of the lack of day schools in their communities.

I might point out that this is not to say that in all cases BIA boarding schools are bad and that they should all be abolished. What we are saying, however, is that adequate day facilities should not be denied Indian families on the basis that BIA boarding schools are available.

Title IV, I believe it is, of the bill has provisions to eradicate this evil.

Apart from the statistics which graphically support the need for this bill, the association is able to state categorically that the abuses this legislation is intended to prevent have occurred longer and more often than any statistical data may show. The association's long involvement with numerous desperate families seeking to be reunited with lost children, parents and siblings, has revealed a frightening, pervasive pattern of the destruction of Indian families in every part of this country.

We believe strongly that the bill before you, with some minor modifications, is a logical, comprehensive and humane approach to eliminating this tragic state of affairs. Moreover, we believe that if Congress fails to confront this demonstrated evil with this kind of strong remedial legislation, it will have not fulfilled its obligation to the Indian people. This bill deserves your utmost attention.

We have heard a number of objections to this bill about assumptions on what the bill will do. Those are erroneous.

I would like to go through them:

It will not infringe on States rights. The bill will, however, serve to clarify within the limits of present law jurisdictional divisions between State and tribal authorities. Moreover, it will force State courts to recognize cultural and social standards of Indian tribes and require courts to inquire more deeply into Indian family relationships.

For example, Indian cultures universally recognize a very large extended family. Many relatives of Indian children are considered by tribal custom to be perfectly logical and able custodians of Indian children.

This bill will require State agencies and courts to recognize this extended family when considering placement of an Indian child.

If you look at the pictures on the wall and look at the houses occupied by those people, if you turned a welfare worker loose in there, he would remove every child from those homes because the homes were unfit.

By imposing such duties on State courts, Congress legitimately will be exercising its authority to protect the interests of Indian people. If a State considers these standards to be unreasonable, we question whether that State can honestly claim that it administers Indian child placement matters with the best interest of the child in mind.

This bill does not condemn Indian children to abuse and neglect in the name of tribal sovereignty. It does, however, recognize the legitimate interest of the tribes in the welfare of their children under certain specified circumstances. Furthermore, it will make available to tribal governments and organizations resources that they need to strengthen Indian families.

I would like to treat some of the specific objections raised by the Bureau of Indian Affairs, and I would like to start by saying that the statement presented by the witnesses from the BIA is irresponsible.

First they say there is a need for the bill, and then they ask for more time to submit their own bill, when they have been aware of the problems at least as far back as the oversight hearings in 1974.

They have had plenty of time to prepare and submit a bill if they were interested. I don't think they want more time. I think they want to subvert this effort by delay.

That is not to say that we would not support a legitimate bill submitted by the BIA, but I think asking for more and more time is not responsive to the legislation.

Moreover, they come up with asking for more authority for title II. If they have the authority, why have they not done something besides ask for more time?

They assert that S. 1214 would interrupt the jurisdictional lines. That is not true.

The BIA objected to the provision in the bill requiring the court to make a determination whether a child is an Indian.

Mr. Chairman, you are asked not to support this bill because a court will have to determine an issue. What on Earth are courts for if not to determine issues?

State courts do not have any trouble determining whether a child is an Indian when it participates in the ripoff of Indian children.

The definition of the child placement is a tempest in a teapot.

If the Bureau believes it is limited to voluntary placements, that could be amended.

Moreover, in any State, there is no such thing as a purely voluntary placement. Some court action is required in order for a custodian to have authority to do a number of things, such as, in California, to enroll a child in school. You have to have a court order to admit a child to a hospital, in some cases. You have to be the legal custodian.

This bill would allow the private placement mentioned in the BIA statement, and the Senate bill; the court could turn that voluntary placement in the termination of parental rights.

The statement of the BIA that nowhere is the best interest of the child a standard is sheer nonsense. The entire bill is designed to achieve that end; unless the BIA is prepared to say that maintaining contact with parents and tribes in all cases is not in the best interest of the Indian child, their statement cannot be supported.

The guidelines in the bill would protect where such contacts are not appropriate. Both the Bureau and the HEW object that the tribe should be notified and given the opportunity to intervene.

Obviously, the BIA has not read what the significant contacts are. I would like to read them into the record:

> For the purposes of this act, whether or not a non-reservation Indian child has significant contact with an Indian tribe shall be an issue of fact to be determined by the court on the basis of such considerations as membership in a tribe, family tribe, reservation domicile, the statements of the child demonstrating a strong sense of self-identity as an Indian, or any other elements which reflect a continuing tribal relationship.

The example cited by the BIA would not apply. If the Indian woman goes off the reservation and has a child, the child has to have contact.

The BIA raises one legitimate point. We acknowledge the need for counsel to be appointed to represent the child in most cases. We have suggested an amendment be included to take care of that matter.

We want to emphasize, however, that welfare workers should not be able to place a child in an adversary position with its parents without good cause.

As to the BIA's objection to title II, I am appalled that a Government agency can come up here to testify and oppose remedial action for a need they admit exists, when they have powers already to take care of part of the problem.

Mr. Chairman, we are not talking here about minority children. We are talking about Indian children. They want to study existing programs to see how they help in these matters. Existing programs have not worked. That is why we are here, and inserting the name "Indian" into an existing program is not a commitment on the part of HEW.

A closer look, as they term it, will not provide meaningful help, and providing more State control over Indian child welfare is not the answer.

The States' record in that regard has been made clear and will be made more clear as the day goes on.

If, by passage of this bill, a reluctance to adopt Indian children is created by the requirement that an Indian child's tribal background be considered, then so be it.

This bill is not designed to make the adoption of Indian children easier.

I would like to clarify a couple of points in my prepared statement.

With respect to the preference guidelines for placement, the bill states these guidelines will be utilized absent good cause. It is not possible in every situation to determine what that good cause might be.

We are talking about here, Mr. Chairman, about the guidelines for placement in an Indian family, home, and that kind of thing.

These guidelines do not have to be followed if there is good cause to the contrary. That might be a situation where a handicapped Indian child will not be placed in an Indian home because no facilities to take care of the handicap existed.

You might have a child with a health problem that required special treatment. The standards cannot be imposed without deference to these kinds of unique needs.

In conclusion, Mr. Chairman, the association implores you to pass this bill with all of its provisions intact. A weak bill would not recognize the best interests of the Indian child or the Indian family and would only open the door for greater abuses. A weak bill, therefore, would be a breach of Congress' trust responsibility to Indian people. The only reasonable approach and one strongly urged by the association is passage of a bill which establishes standards strong enough and clear enough to eliminate illegal, ill-advised and immoral Indian child placements. Furthermore, a bill is needed which gives Indian tribes and communities that means to deal with the problems faced by their families.

Mr. Chairman, members of the committee, the association suggests that you consider the cultures and philosophies of the country's Indian tribes as national resources which have been mismanaged, squandered and, in some cases, nearly destroyed by inadequate and poorly conceived Federal and State policies—not the least of which has been the forcible removal of Indian youth from Indian family and tribal influences. The bill before you is a well conceived, essential piece of legislation which can insure the preservation of a national treasure—the proud cultural integrities of its Indian tribes. The time has come to give the responsibility for protection of the Indian family back to the Indian people.

Mr. RONCALIO. Thank you, Mr. Wilder.

Do you have a copy of the bill handy?

Mr. WILDER. Yes.

Mr. RONCALIO. Your statement recommends we drop subsection (h), and I assume that is on page 15.

Mr. WILDER. I am referring to my testimony where it occurs in my written statement. The section is section 102(h).

There was language in the bill at one time, Mr. Chairman, which would require any movement of an Indian child off the reservation to be reported to a number of agencies, and a number of programs objected that this would eliminate the benefits of their program.

However, that language has been dropped, and therefore we feel the need for this provision is no longer required.

Mr. RONCALIO. I am not sure I follow that.

Let me ask you this question, Mr. Wilder.

Does this bill, as referred to this committee for action from the Senate, prohibit the adoption of an Indian child by a non-Indian family?

Mr. WILDER. No.

Mr. RONCALIO. That is all I wanted to hear.

Thank you very much.

You wanted to add something, Ms. Denny.

Ms. DENNY. I wanted to add as a person who works daily with this problem. We continually hear the Bureau and HEW say that Indians do not have the capability, they do not have the training, they do not have this, and they cannot do it. So our response is to enforce the States in providing the services. In the State of Washington, Indian people were able to amend the Washington administrative code in October 1976, and that code now contains an Indian amendment that outlines the same placement standards as set forth in S. 1214.

However, this leaves the responsibility of the State welfare workers to adhere and abide by those placement standards, and, believe me, they have found 1 million ways to deviate and go around. There is no way to monitor to be sure these placement practices are truly carried out, because their attitudes are set, and you cannot change attitudes.

So this Washington administrative code has had very little impact in the State of Washington as far as what is happening when welfare workers and non-Indian social workers are dealing with Indian children.

So it is very important that this committee recognize that Indian people do have the capabilities. They do not have to have a master's degree in graduate school.

Mr. RONCALIO. I know of two master's degrees, at least, on each of my two reservations.

Ms. DENNY. Even if you have those degrees, I do not know any graduate school of social work that can teach one to go on the reservation and provide relevant child welfare services. In fact, I am not sure they teach anybody how to do anything with people, not just Indians, but with anyone.

The placement standards and the foster care system throughout the United States is a total disgrace anyway, not only for Indian people, but for all children. The foster care program has been abusive for many years in allowing the children to remain away from their natural parents, and no services have been provided to anyone to return the children.

The whole intent of foster care has been totally ignored, and now HEW and all of the people concerned feel the child welfare have taken, flipped the coin over, and have gone off on a tangent in the other way.

They free up adoptions, and, "Get that child adopted in 30 days."

In my way of thinking that is a very poor practice. Adoption is a serious matter and should be well thought out and well planned. I do not see any necessity for, "Hurry up and get that child adopted in 90 days."

I think we are going to find a lot of unfortunate children who wound up with parents who really were not ready to accept the responsibility of that adoption.

The trend is going the other way now, and I think that is very dangerous.

I would like to cite a couple of individual cases, because people question, "Do these things really happen?"

I am going to cite a couple very quickly on the Quinault Reservation.

A mother was deprived of her two children for 6 years. They were placed off reservation in non-Indian foster home, and the parents and relatives were denied any visitation or any contact. It was discovered by my Social Services Department that the parents had never been notified of any original deprivation hearing.

The deprivation order has been set aside, and the children, now ages 8 and 10, are at home with their parents again.

This is a case where Indian rights were just totally violated. They never had a deprivation hearing, and lost the children for 6 years.

The other is a 10-year-old Quinault boy who was adopted and taken away from his mother at an early age, about 2 months old, and adopted into a Catholic home, who had their own little United Nations going, and the child developed at 10 years of age serious identity problems which required psychiatric treatment. This condition remained unchanged through a period of 2 years of treatment from the age of 8.

A year ago, the non-Indian adoptive parents stated they could not cope with the child's behavior and requested that he be sent back to the "Indians."

The child has been returned to his family. His identity, including his original name, has been restored, and the child has made a remarkable adjustment within a short span of time and has exhibited none of the behavioral problems that he had prior to his return.

The parents of this child are in the unique process of adopting back their own son.

Another case I would quickly like to refer to is a public record of the Quinault Tribe. Those children remained in foster care for 6 years, and through the efforts of my paraprofessional staff, we uncovered through a period of 6 years, this case was taken to the Supreme Court, as you might recall, and the Quinault Tribe repeatedly lost the case.

So those children by Supreme Court order remained in non-Indian foster care for a period of 6 years.

My staff was able to recover these children because they had been, and were being, abused in the foster home for a period of 6 years.

Mr. Chairman, Indian people are capable. With paraprofessional staff, the Quinault Tribe has been able to do this, and there have been more positive results than have happened on any Indian reservation in a long time, and the Quinault Social Services Department is being asked to come to other reservations and tell them how we started our program using paraprofessionals.

So Indian people do want to provide services, and they certainly are very capable.

I thank you for your time and patience and for the opportunity to testify.

Mr. RONCALIO. We thank all three of you very much for your contribution to our work this morning.

Bobby George, Mel Sampson, Mona Shepherd, and Faye La Pointe.

[Prepared statement of Mona Shepherd before the Senate Select Subcommittee on Indian Affairs and the prepared statement of Faye La Pointe may be found in the appendix.]

PANEL CONSISTING OF: MONA SHEPHERD, SOCIAL SERVICE COORDINATOR, ROSEBUD SIOUX TRIBE; VIRGIL HOFF, ATTORNEY FOR THE ROSEBUD SIOUX TRIBE; MEL SAMPSON, CHAIRMAN OF THE HEALTH, EMPLOYMENT AND WELFARE COUNCIL OF THE TRIBAL COUNCIL, YAKIMA TRIBE; AND FAYE LA POINTE, COORDINATOR OF SOCIAL SERVICE FOR CHILD WELFARE, PUYALLUP TRIBE OF WASHINGTON

Mr. RONCALIO. We had a very important bill for the Sioux Tribe here, but we have taken it off the calendar. It is the old question of taking without compensation.

Who would like to begin? Ladies first? Go any way you like.

Does each of you have a separate statement, or is one going to speak?

Ms. SHEPHERD. Mr. Chairman, I am Mona Shepherd from Rosebud Sioux Tribe, and the administrative lobby has reviewed S. 1214, the Indian Child Welfare Act of 1977, and as designated representatives of our tribe, we are here to state that the Rosebud Sioux Tribe gives its full support and approval of the contents of S. 1214.

The provisions of the act pertaining to the transfer of cases from State to tribal courts is of special interest to our tribe at this particular time. We are currently involved in a battle with the State of South Dakota which refuses financial assistance for the provision of services to "adjudicated" Indian welfare youth.

State and tribal courts in South Dakota differ in their legal interpretations of the term "adjudicated" youths and the conflict that has arisen has resulted in the lack of much-needed services being provided to a number of our young Indian welfare recipients.

Should S. 1214 become law, conflicts in State and tribal legal interpretations would be less evident because tribal legal interpretations would be the only interpretations the tribes need concern themselves with.

The time wasted in battling with State courts only creates additional hardships for our young people. In addition, the fact that tribal courts, through S. 1214, would have jurisdiction over the placement of Indian children would mean that parents and extended families of the children involved would have their rights more clearly recognized and enforced.

Often parents or extended family members are not fully aware of their rights or the court procedures and their meaning and this often results in Indian children being placed in foster or non-Indian adoptive homes which is not the tribe's ultimate goal.

In addressing title II of S. 1214, the fact that grants could be directly awarded to tribal entities would alleviate unnecessary paperwork and bureaucratic delays in providing much needed services to Indian children and their families.

We are extremely apprehensive about the State or the Bureau of Indian Affairs having any control over family development programs for it has been our experience that such funding can be frozen by these agencies which leaves the Rosebud Sioux Tribe with no alternative course for funding.

When this occurs, we find ourselves once again, entangled in financial battles with the State or the BIA area offices which only clouds the real issue of provision of services. Direct funding to the tribes would also give those tribal offices in charge of family development programs a clear view of the funds available to work with and would enable them to make more accurate projections for future financial projects.

Title III, which provides alternative measures to insure that Indian children placed in non-Indian foster or adoptive homes are informed of their tribal rights is a vital concern of the Rosebud Sioux Tribe.

Not only can enrollment become a problem for these individuals but when probating Indian estates, heirs who are children adopted by non-Indian families cannot be traced due to the fact that State agencies will not release information as to their whereabouts nor will they release name changes resulting from such adoptions.

The fact that the Secretary of Interior can intervene in such matters gives added assurance to these individuals that their full tribal rights and benefits will be granted to them.

Title IV which pertains to the study of day school facilities such as Bureau of Indian Affairs boarding schools is a long-awaited action. Many of our Indian people have experienced living in these educational institutions and although many needed changes have occurred, there must be alternative education measures created.

The study of current problems and situations in boarding schools will enable tribal administrative bodies to seek out alternative educational programs and to make adequate financial projections for funding such alternative measures.

In summary, we of the Rosebud Sioux Tribe, fully endorse proposed S. 1214 and feel that its structure and purpose will enable the Indian tribes to overcome many stumbling blocks which have for too long hindered the provision of necessary services to our Indian children. The Rosebud Sioux Tribe sincerely hopes that this proposed legislation will soon become enacted into law.

Mr. **Roncalio**. Thank you, very much for a very good statement.

Ms. **Shepherd**. I have Mr. George Hoff.

Mr. **Hoff**. I am Virgil Hoff, an attorney for the Rosebud Sioux Tribe and a juvenile judge for the tribe.

Mr. **Roncalio**. How many instances have there been in the last decade where you have had difficulty in chasing down heirs in probating an estate because Indians have been adopted by non-Indian families.

Has that happened once or twice, or what?

Mr. **Hoff**. I cannot speak from personal experience, Mr. Chairman. I have never handled a case like that myself, personally. My understanding shows that it is quite a large number.

How large, I cannot say. It is quite a common occurrence, especially when you are concerned, with, say, the Pine Ridge, Rosebud. Basically, all South Dakota tribes are in that, and until recently, the courts have not had their adoptive procedures.

Therefore, most adoptions have gone through State court channels, and, of course, the records are all sealed.

Mr. **Roncalio**. Who is next on the panel?

Mr. **Sampson**. Thank you, Mr. Chairman.

I am Mel Sampson. I do not have a prepared statement. With your permission, I will submit one probably within the next 10 days, but I do have some concerns.

Our nation is a member of the National Congress of American Indians as well as the American Tribal Association. So we go on record as supporting NCAI's testimony and after listening to Mr. Wilder's testimony and concerns, we will go on record as supporting his, also.

I would like to enter that into the record.

The Yakima Indian Nation has covered a lot of documented cases that have been of great concern with respect to the previous question you raised.

We definitely feel that unless something is done within the near or immediate future, such as occurs in the Senate bill that we are considering, that things are going to get progressively worse, and we currently have lost the children through the adoptive procedures to the State and through private agency procedures.

We have generated, I guess, what could be construed as a limited amount of rapport with the State mechanism now of trying to get some control or be involved with any adoptive procedures, but we have absolutely no control over them when they go through the private agencies.

When I submit the information, we will submit some actual cases for your reading. Some of them will make you sick on what has happened, and I have to hand it to the State situation to a limited degree where they are not coming around and at least have given us an opportunity, with respect to contact, as far as the reviews.

Mr. **RONCALIO.** We will hold the record open for 2 weeks. Get it to Frank Ducheneaux, and we will consider it.

Mr. **SAMPSON.** Thank you.

I would like to cite one that I think is a classical example, if I could, from memory.

This particular Indian girl was adopted when she was an infant, and she was adopted by non-Indians, a non-Indian who was her uncle. Her father was a white and her mother was an Indian She was enrolled, fortunately before she was adopted by her mother, and her mother passed away. So she became heir to a substantial amount of land which had been through the lease procedures, and the Bureau of Indian Affairs allowed her adoptive parents to set up a guardianship in a different State than the State of Oregon, and put all of this young girl's money, which was in the thousands, and set this up and this girl paid—they set up the guardianship.

She paid her own way through school. She paid all the legal fees; she paid all her legal fees—all of them—and she paid an amount, and I cannot remember the amount, and there was an amount paid monthly to her supposed parents, and she paid her way through life, in essence.

She did not know this was happening until we discovered it 3 years ago.

Mr. **RONCALIO.** I can assure you that that process has worked for man against his fellow man over the centuries, and not just Indian against Indian.

We understand your citing that as a need for the bill.

Mr. **SAMPSON.** We will provide these kinds of things in reference to the question that Goldie mentioned, if these things really happened.

Mr. **RONCALIO.** All right.

Mr. **SAMPSON.** One other thing I would like to address, and that is that there is a lot of concern, and I heard from the HEW segment, with the capability of the tribes being able to administer this kind of program.

I have absolutely no doubt in my mind that the Yakima Tribe has, I think, a better capability to do it than what the current process is, and I cannot say that for any of the other tribes, but I am assuming the awareness that they have in reference to what is happening.

I think we would be able to adapt, we would be able to administer these kinds of things a lot faster than with those we are relying upon right now, because the sacredness of the children, at least in our situation, is a priority.

We can say that that is a priority. We definitely have the capability to manage that.

With that, I thank you, and I will be submitting you some material for the record.

Mr. **RONCALIO.** Thank you, very much.

Ms. **LA POINTE.** I do not think I want to use the microphone.

I appreciate the chance to testify before you. Ramona Bennett, our tribal chairwoman had planned to be here today. She had an attempt made on her life just prior to leaving, so you got to me.

The testimony was prepared, and I found one major error that I would like to point out when I get to it and ask you to change it.

Mr. Chairman, members of the committee, my name is Faye La Pointe. I am here representing the Puyallup Tribe. I appreciate this opportunity to testify before you.

The Puyallup Tribe has been caring for the protecting the rights of Indian children for many years. We know that our children are our greatest resource, and without them we have no future.

For too many years we were helpless, watching our children being taken from our homes and families. We have been here many times before with the same message: "We know what is best for our children."

The tribe is presently operating a school system which provides individualized teaching for 250 Indian students. We also have the only Indian-based Indian-run group home in our area licensed by the State of Washington to care for 14 Indian children between the ages of 7 and 18. With budgets stretched to the maximum, the tribe manages to provide medical and dental care, social and recreational activities, and legal services on a limited basis.

Many dedicated Indian adults give up their time and talent to work with young people. However, due to the lack of proper funding, most of these people are working 12- to 16-hour days. We know if we are to fill the immediate needs of Indian children, we must begin to work with the handicapped children in institutional care, provide infant crisis care and treatment centers for teenage drug and alcohol abusers, offer services to the juvenile offender, the mentally ill, and finally the abused and neglected child.

This program could provide a solid foundation for a complete Indian Child Welfare program on the Puyallup Reservation. However, we feel we must point out to this committee the inadequacy of the allocation. $26 million, if distributed equally among the tribes and Indian organizations will lead us to the same frustrating conditions we face today.

This tribe has been denied funds through the Department of Health, Education, and Welfare for a program for abused and neglected children, and have still provided training and technical assistance to other tribes who were funded.

I would like to strike the next sentence.

We invite this committee to investigate our agencies and remember us when confronted with other Indian issues.

Mr. RONCALIO. Would you tell us again which sentence you wanted stricken, "We have been denied funds through the Office of Human Development," and so forth?

Ms. LA POINTE. Yes; that was the Office of Child Development, and I do not think the Office of Human Development would appreciate that.

Private child placement agencies have indicated a concern for the confidential rights of the unwed Indian mother. We, too, are concerned about the Indian mothers' rights. We know that in most cases the Indian mother would prefer to have her child adopted by Indian parents if the prospective parents were known to be reliable, stable, sober adults.

We also know that most adoption agencies, while protecting the mother's confidential rights are not prepared to offer this type of home nor are they actively recruiting such homes.

We are also concerned about the rights of the unborn Indian child. The right to know where he/she is from the right to apply for enrollment in the tribe of his/her ancestors. We know that too many young lives have been damaged by well meaning non-Indian foster and adoptive parents. We are prepared to offer top quality confidential services to the unwed mother and responsible Indian foster and adoptive homes to Indian children.

The LDS program is still allowed to operate. This is referred to as an educational program and takes Indian children away from their homes and families. We know that this practice, if allowed to continue, will inevitably end in genocide.

Every Indian person should, indeed, have the right to choose what is best for their child. A choice that is uninhibited by such conditions as poverty, illiteracy, physical, emotional, or mental handicaps. When these conditions become rare rather than commonplace in Indian country, we will believe that Indian people truly have the right of free choice.

The Puyallup Tribe wholeheartedly opposes the LDS program and encourages this committee to discourage the efforts of the Mormon Church in their practices of genocide on our people.

Indian young people who have been adopted by non-Indians have come to the tribal office requesting assistance in locating their families. One case is concerning an 18-year-old girl that arrived in our area last summer requesting such assistance.

She remembered living in Tacoma when she was 4 years old. She knew she had two sisters, one older and one younger. Tribal employees contacted both public and private agencies but were told nothing. Ramona Bennett, tribal chairwoman, brought her to me.

While visiting, I realized she was my second cousin. Her mother had died of acute alcoholism years before. I believe she drank herself to death because she could not face the shame and heartbreak of giving up her children.

I had tried years ago to get information about the girls but was refused for confidential reasons. I was willing to provide temporary care and believe to this day that that was all that was necessary.

With the help of other tribes and Indian organizations, the girl was reunited with her two sisters and her father. The girls are now enrolled in their tribe and are active participants in the Indian community. All three girls were raised by non-Indians and claim their childhood was lonely and without meaning.

In closing, I would like to say that the Puyallup Tribe supports S. 1214. It will give us the right to make decisions about our future. It will provide badly needed Federal standards for the placement of Indian children. It will insure the survival of the American Indian.

Thank you for your time and concern.

Mr. RONCALIO. Thank you for your excellent statement. We are happy to receive it. I do not know whether we can bother that $26 million in title II, but that is better than nothing. Maybe we can move ahead with that now, and see what we can do later.

Thank you, very much.

The statement of Bobby George will be put into the record.

[Prepared statement of Bobby George may be found in the appendix.]

PANEL CONSISTING OF: VIRGINIA Q. BAUSCH, EXECUTIVE DIRECTOR, AMERICAN ACADEMY OF CHILD PSYCHIATRY; RENA UVILLER, DIRECTOR, JUVENILE RIGHTS PROJECT, AMERICAN CIVIL LIBERTIES UNION; SISTER MARY CLARE, DIRECTOR OF CATHOLIC SOCIAL SERVICES OF ANCHORAGE, ALASKA, REPRESENTING THE NATIONAL CONFERENCE OF CATHOLIC CHARITIES; DONALD MITCHELL, ON BEHALF OF RURAL ALASKA COMMUNITY ACTION PROGRAM (RURALALCAP), ALASKA; AND DONALD REEVES, LEGISLATIVE SECRETARY, FRIENDS COMMITTEE ON NATIONAL LEGISLATION

Mr. RONCALIO. You four are welcome to the table.

We are going to go straight through without breaking for lunch, if no one has any objections. Maybe we can finish up fairly soon.

Ms. BAUSCH. Mr. Chairman and members of the Subcommittee on Indian Affairs and Public Lands, I am Virginia Q. Bausch, executive director of the American Academy of Child Psychiatry.

The AACP applauds the concerns of the House Committee on Interior and Insular Affairs about problems affecting the welfare of Indian children and we laud this particular bill which attempts to provide the framework by which significant changes could result for Indian families and children.

Mr. RONCALIO. Let me interrupt and ask that your whole total statement be admitted in the record.

Ms. BAUSCH. I think what you have is our position statement on adoption.

Mr. RONCALIO. Yes; and we would like to put that in the record.

[The statement referred to may be found in the committee's files.]

Ms. BAUSCH. Last spring, the American Academy of Child Psychiatry sponsored a meeting in Bottle Hollow, Utah, on "Supportive Care, Custody, Placement and Adoption of Indian Children."

Mr. RONCALIO. Where is Bottle Hollow, Utah?

Ms. BAUSCH. Up near Vernal, on the Ute Tribe Reservation.

We have made copies of the proceedings and findings available to the committee and to its staff.

The document details the degree of the problem of inappropriate placements of Indian children and formally records the interest and creative ingenuity of Indian groups in devising programs most useful within their specific cultures.

The overall intentions and recommendations of S. 1214, as referred from the Senate are commendable.

We would, however, like to share some comments and suggestions with you.

Section 3, page 3, "Declaration of Policy."—Boarding schools for many years have been used not only as educational institutions but also for social service placements. The boarding school is in disrepute educationally and we suggest that, additionally, it is an unsatisfactory instrument for social service.

If an Indian family is in turmoil or is disintegrating, placement of the child in a boarding school somehow has been offered as a solution. This has not proven an effective treatment in helping the child or the family. This bill through various programs would help the child and the family by providing support services and more appropriate placement than the traditional boarding schools.

NATURAL PARENTS

Throughout the bill, the term parent is used and defined as the natural parent. We suggest that for clarity's sake, this definition conform to standard practice and the use of the terms such as biological or psychological parent be used.

The child placement standards in title I establish clear guidelines safeguarding the interests of children and their families, while respecting the very great importance of cultural ties.

Our concerns about such matters were expressed in an official position statement, the one you have entered into the record, of the American Academy of Child Psychiatry adopted in January 1975, entitled, "The Placement of American Indian Children—the Need for Change."

Copies of this statement are attached.

The general intentions in title II of establishing family development programs are commendable and encourage tribal groups themselves to establish such programs.

In regard to these programs, there is need for technical assistance. We would hope that provision could be made for establishing a consulting group composed of Indian people experienced with programs and who could assist tribes and urban groups in establishing their own family development programs. This bill gives much responsibility to tribes but it must be recognized that technical assistance should be available if a tribe desires it.

The academy's major concern, however, is the implementation of this act. It is the impression of our committee—which consists of many Indian consultants as well as child psychiatrists with experience in working with Indian families—that the history of the Bureau of Indian Affairs in matters of child welfare and child mental health is not one of consistent advocacy and leadership.

The Bureau has not reacted enthusiastically to this bill and we therefore question the Bureau's ability to accept and carry out Congress mandate. We realize the reasons are complex, but the well-known placement rates of Indian children, as compared with non-Indian children, says something very significant.

Indian children are placed at a rate 20 times that of Anglo children. It seems to us that there has been a lack of sensitivity and responsiveness within the Bureau in matters of child development and child welware. We realize that the Bureau is not alone here.

The AACP suggests therefore that this bill be amended to formally establish an advisory board which would oversee implementation of this bill and the development of the programs outlined by S. 1214.

Mr. **Roncalio**. Who would be put on that board?

Ms. **Bausch**. When we held a conference in Bottle Hollow, Utah, we realized many tribes had developed practices, and I think some of the Indian social workers know what is going on.

They would be in a position to say, "Don't give all the money to the Southwest to distribute it in such a way," and they could monitor the programs so that the programs would respect unique features, or unique cultural situations.

Mr. RONCALIO. What we will not want to do is make amendments to this bill that might not be readily accepted by the Senate on reconsideration on the bill and end up going to conference.

We are going into a terribly busy schedule. Speaker O'Neill is determined that we work 5 days a week, and on October 1, we adjourn. We are trying to avoid amendments on all legislation that will do no more than effectively kill bills.

I know you do not want that to happen. So, if we can get the right kind of amendment on this bill that would be acceptable to the Senate, we might do that, but it would otherwise create dissension.

Go ahead.

Ms. BAUSCH. We would not want this to be delayed in any way, but I think the establishment of the advisory council seems a reasonable thing.

Mr. RONCALIO. I guess that is in your statement.

Thank you, very much, for that.

Ms. BAUSCH. Thank you for this opportunity to present our view. If there are any questions, I would be happy to answer them.

Mr. RONCALIO. Thank you.

Ms. Uviller is next.

Ms. UVILLER. I will depart from my prepared statement to summarize.

The purpose of my project, one of the priorities of it has to resist unwarranted State encroachment into family life in general, not just limited to Indian children.

Therefore, I find it ironic that the HEW opposed this by saying that the States can attend to the need of the Indian children.

The rate of unnecessary foster care in this country is reaching a scandalous proportion. The inability of welfare agencies to reunite families and keep them together in the first instance is a question of major concern, and, therefore, the notion that Indians should be cast in the same mold as the rest of the country, I find somewhat peculiar.

Basically the ACLU strongly supports this bill. We think it is a very good effort to help the districts of the Indian family. Before I talk about a few suggested revisions, and I might note that I was very gratified to see that some of my suggestions that I made before the Senate subcommittee were incorporated in the present bill, but I have a few others. But I go to them, I would note that I have heard bandied about, and I think it is a high sounding term that has often very devastating consequences and that is the notion that children can be taken on their families on a "best interest" theory, that somehow if it is in the "best interests" of the child, a State or a social worker can somehow take children from their parents.

We have, fortunately, not achieved a form of government yet where someone stands in judgment and decides who is more beautiful, smarter, and richer, and, therefore, the child would be better off elsewhere.

The presumption bears heavily in favor of the parent. The parent has to be derelict in their responsibility and must have neglected the child.

Mr. Roncalio. What is your position regarding civil courts in matters of divorce and custody? Do you still think the judge has the right to deny one parent custody of a child and give it to another in the face of gross and total neglect?

Ms. Uviller. I think the best interest standard in that case would apply, but in these situations we are talking about, taking a child, giving it to a third party.

Mr. Roncalio. It is not a relevant analogy, then, is it?

Ms. Uviller. That is right.

On that very ground I would like to address my second suggested revision, first, which is contained on page 4 of my testimony.

I am very concerned that the standards relating to emergency removal of the child from his parents, it has been my experience in dealing with the child neglect standards generally that the beginning of the long and sad process of separating children from their parents often begins with this so-called emergency removal.

The present section would allow a State representative to come in and take a child away whenever there is "an immediate threat to the emotional or physical well-being of an Indian child."

I have dealt with such provision in statutes of many jurisdictions and I would like to state unequivocally that the standard as written is much too lax, an immediate threat to the physical well-being of the child, as I note in my testimony, can be a child sleeping in a drafty room who is liable to get a cold.

The notion that you can take a child because he or she may be subjected to emotional neglect is looser yet. That can mean anything any particular individual happens to decide is or is not a happy situation for a child.

The ACLU has always successfully resisted such language in the parental neglect statutes in general. The courts have ruled that such terminology is much too weak.

I would say for a State official to take the extraordinary step of going into a home and seizing a child summarily, I propose some language that I think would be much more stringent, and, first of all, it would exclude emotional neglect altogether.

Mr. Roncalio. Threat to life or imminent threat of serious physical harm?

Ms. Uviller. Yes; and I would suggest that would be a more appropriate standard.

Then, the other thing that bothers me about this is that I am not sure, in talking about the 72-hour hearing that must take place after such emergency removal. I am gratified that this hearing was incorporated. That was one of my previous suggestions, but even though there is the 72-hour hearing after the emergency removal, there are two problems.

First, it is not clear to me that at that 72-hour hearing the parents are entitled to counsel. The section that provides for counsel expressly seems to except the emergency removal situation.

This may be a question of legislative drafting, but it should be clear that after the hearing held within 72 hours of the emergency removal, the family has counsel, because that is usually the beginning of the long process.

There are lots of delays while the social worker reports are brought in, and the emergency gets to be a few weeks and then a few months and then so forth.

I think the section as written fails to provide a standard for what the tribunal must determine at this 72-hour hearing, and it was my suggestion that at that 72-hour hearing, the tribunal shall return the child to the family or tribe if the removing agency cannot show by clear and convincing evidence that such a removal—that such a return to the family—will create a risk to the child's life or expose him or her to imminent risk of serious physical harm.

I think there are situations in which, for example, hypothetically one learns of a child being left unattended, say, a baby, an infant, and with due respect to that child's welfare someone goes in and takes the child out.

After the hearing, it was found that the parents did leave the child that night, but there it was an exceptional circumstance, or, in fact, that there was a relative near by, then that child shall be returned.

I also would note that I think it should be incumbent upon the removing agency to show that the provision of some sort of in-home service would not obviate the danger that caused the initial removal.

Another concern, and I will be brief, is this question of counsel.

I have heard earlier representatives talk about this question of counsel, and I have been very involved in just what counsel for a child means.

I think it is a very thorny and complicated question. For an older child, say, 12 or more, who might formulate some reasonable point of view, certainly there should be counsel. It is not that I am advocating that there should not be counsel for all children, but I would not for a very young child, counsel is invariably a panel-type of lawyer, usually supplied by the State, and very often that attorney does nothing more than inject his or her own prejudices into the situation.

I think the use of counsel is very often a way by which State authorities, because in fact attorneys are paid by the State, inject the so-called best interest theory into a proceeding which serves often to divide a child from its parents.

It seems to me that perhaps a court should be able to assess when there are such extraordinary circumstances that counsel should be appointed. The notion of automatic counsel for child in a child protection hearing poses some problems.

I have not in my own mind formulated how this should be resolved, but I note it is fraught with some danger.

My final suggestion is the first one that I listed. In my earlier testimony, I had recommended that notice be given to tribal authorities and the natural parents in the event of a so-called failed adoption, and this was essentially the reflection of the fact that the representatives of the tribes know there is a high failure rate of extra-tribal adoptions.

I notice that the present bill does allow for such notice, but it allows for such notice only where that child had been previously placed in foster care in a temporary type of placement.

The point is that it is the adoptions themselves that often go awry. I do respect the enduring nature of a valid adoption. However, when you are talking about a child who is about to face many years in a mental institution, or is going to be incarcerated in a reformatory because his parents have filed an incorrigibility petition about it, just because he was adopted, there is nothing magic about that term, when the adoptive parents are no longer providing for a welfare of the tribe.

I think the natural parents and the tribal authorities should be provided for some sort of notice so that if it is possible to offer that child some happier alternative, that child should be accorded the same right as the child placed into foster care.

As I say, with these few recommendations, the ACLU heartily endorses this bill.

Mr. RONCALIO. Thank you. We have already taken care of adopting possibly one or two of them.

We thank you, very much.

Sister?

Sister MARY CLARE. Mr. Chairman and members of the Subcommittee on Indian Affairs and Public Lands.

I am Sister Mary Clare, director of Catholic Social Services of Anchorage, Alaska. I am here to offer the views of my own agency and the National Conference of Catholic Charities on the Indian Child Welfare Act of 1977.

The National Conference of Catholic Charities is an association of all of the Catholic social service agencies in the United States. There are 147 of these agencies, all of which provide services to families and children through approximately 1,500 branches and institutions. Almost all agencies have well-developed adoption services and foster care programs.

My own agency is a typical example of the Catholic agencies across the country, although smaller than most. We are the social service arm of the archdiocese of Anchorage, Alaska. We operate on a budget of approximately $110,000 and a paid staff of 10.

We provide family counseling, single parent counseling, and foster care, adoption services, and a food and clothing distribution center for the poor. We have been in existence for 12 years and are the only private licensed adoption agency in the archdiocese.

When I first went to Alaska, adoptions were done by lawyers.

Mr. RONCALIO. That was 10 or 12 years ago; before the ANSCA bill?

Sister MARY CLARE. Yes; I had to go to a home where a girl was crying. She did not know where her baby was going. She said she had talked to a lawyer 3 months ago who placed the baby.

Then, I realized the need for service to the unmarried mother. So we really have specialized in that service within the last 12 years, which I will tell you about a little later.

We place approximately 40 children per year in adoptive homes.

Mr. RONCALIO. Are all 40 of those Alaskan children?

Sister MARY CLARE. No; we placed 20 caucasian children.

We also provide assistance to single mothers who decide to keep their babies. Unlike other agencies, we do not have a foster child care program. Like all agencies, our program is voluntary.

We have no power to remove children from their parents. Thus all placements are done with the complete consent of those involved. All services are provided on a completely nondiscriminatory basis without regard to race or creed. In a sense, we are unique. We place babies in all religions. There was no service to people of other religions, so they just asked us to perform this service.

Therefore, we do not usually deal, really, as far as race and creed are concerned.

Mr. **Roncalio.** You deal with human beings?

Sister **Mary Clare.** Yes, we really have that philosophy, I guess. We were forced to, in a sense, adopt it, because people needed our services.

We have children and adoptive couples of all races, including Alaska Natives and other American Indian tribes.

Because of our work with Indian parents and children, we are very interested in the Indian Child Welfare Act of 1977. We strongly support efforts to strengthen Indian families, as we do for all families.

We are very family-oriented in our agency. I want to explain that a little bit, because of some of the comments that were made disturbed me a little bit. Moreover, we recognize the special needs of Indian families which need to be dealt with in a particular way.

For this reason, we wholeheartedly support title II of the bill relating to Indian family development. The various Catholic agencies are anxious to cooperate to achieve this purpose.

In regard to title III, we support the goal of the bill in preserving information necessary to allow an Indian child any rights or benefits associated with membership in an Indian tribe. Our only concern in this area is the preservation of confidentiality so that the identity of the natural parents is not revealed. Actually, that is State law right now, and we are getting into the adoptant's right.

Mr. **Roncalio.** Is that a valid concern right now in the language of title II?

Mr. **Taylor.** The language has been modified to permit access to records for such information as may be necessary. In the legislative history, we make it clear. Is that section 104?

Ms. **Marks.** Yes. 104.

Mr. **Roncalio.** Was this the same testimony you gave on the Senate side a few months ago, or were you on the Senate side a few months ago?

Sister **Mary Clare.** I do not believe——

Ms. **Marks.** I believe they are referring to the provisions in the bill at this point. There was a clarification made earlier. Originally, there was a reference to imply the right of Indian individuals over the age of 18 to receive the name of their parents.

Mr. **Roncalio.** But not the reasons for the separation from the parents?

Ms. **Marks.** No; now, this has been amended to allow them to receive such information as is necessary to continue a tribal enrollment or "tribal affiliation"—I believe is the terminology we use.

In some instances, if a tribe should require the names of parents for enrollment purposes, this information will be released, but only if that is necessary to continue this affiliation.

Mr. **Roncalio.** I see a specter raised for the need of identification of a good number of adopted Indians, because distributions are being made under the Alaskan Native Claims Settlement Act. A child has a right to know what his roots are and lay a claim to enrollment in the tribe for the per-capita distribution.

Sister **Mary Clare.** Adopted children do not qualify under that act now.

Do you want me to continue?

Mr. **Roncalio.** Yes.

Sister **Mary Clare.** Our greatest concern, however, is with title I. The bill, as now written, will radically change the nature of the adoption process to the detriment of the natural parents and the child.

While the goals of the legislation may indeed be worthwhile, we do not believe that they should be attained by sacrificing the rights of the natural parents to decide the placement of their child or the confidentiality of the parties concerned which is vital in this sensitive and very personal area.

This bill gives priority to the preservation of a culture. While we strongly support such preservation, we urge that the interests of the natural parents and the welfare of the child be given priority in any circumstance where these goals clash.

As an additional area of concern, unnecessary delay should be avoided in the adoption process since much delay leaves the lives of all concerned in an uncertain status. Also to be avoided is unnecessary expense especially such as mandatory hiring of attorneys and conducting court hearings in all cases.

I would like to discuss these areas briefly. A section-by-section analysis of title I with our comments is attached to copies of my statement and I would like to ask that it be included in the record.

[The information referred to above may be found in the committee's files.]

CHOICE OF THE NATURAL PARENTS

Sister **Mary Clare.** Under Alaska law, the natural parents may voluntarily relinquish a child to a licensed agency for the purpose of placement for adoption. The relinquishment is voluntary and may be withdrawn within 10 days after signing or the birth of the child, whichever is later.

The parents also have an absolute right to keep the child or they may give a consent to adoption directly to adoptive parents including, of course, their own family. As a voluntary agency we have no coercive powers.

Our first duty is to the natural parents to assist them in making their own choice. If they choose to relinquish the child, our duty is, then, to see that the child is placed in a good home.

Sections 102 and 103 take away this right of choice by requiring notice to the tribe or village of which the natural parents are members and further requiring preference to family or other Indians.

In most cases the girls who come to us are single. The father is absent and may not even be aware of the pregnancy. By choosing to relinquish her child to us, the girl has made her choice not to have the child placed with her family or village.

In some cases, the girl is strongly opposed to placement with her family where there is a history of abuse or other poor relationships. We have had families send a girl to us who do not wish to have the child placed in the village.

These choices voluntarily made would be destroyed by the mandatory provisions of sections 102 and 103. In the case of infants, which form the bulk of our placements, no cultural purpose is served since the child is not removed from a culture he has grown up with.

This sounds kind of hardhearted. We have an intense program for our adoptive parents when a child is placed, and a history of this child is related. We have a very complete social history on every child.

These sections seem to have more applicability to older children who are taken from homes forcibly. In our situation, however, all that is accomplished is to deprive the natural parents of their right to choose the placement of their child.

I would like to tell you our program. Let me give you an example to illustrate this. The Eskimo girl told me I could relate the story.

This is a girl I met in one of the villages, in her twenties, who is pregnant, and she was not going to tell her parents. The first time the girl comes to us, we deal with her in context of our parents, so our counseling program is geared to the fear not to have the parents know. They have a right to know, you know.

So, after about a month, she came to Anchorage, and she came in for counseling sessions with the group. In this group process, her sister and her family finally were told, and she felt this was a good chance. Also, her father, whom she thought would be terribly upset. He is a leader in the village, and a very fine man I had met.

It happened that through the counseling sessions, her sisters came into town and said they would like the baby, and she had to determine whether this is the home she wanted the baby in.

Another sister wanted this particular baby. Then she had some decisionmaking to do, and this is what I mean. When we talk about adoptions not being delayed, we mean with the ideal that there has been counseling before. We take the position that the counseling should not be delayed for long periods.

In our program, much of the counseling is done before. Many of the abuses do come in when it is a quick relinquishment, and there have been abuses in the past in Indian children. We could do that as an agency, too, and I can see how voluntary agencies and lawyers, and even the Indian tribes, could do this later when they get jurisdiction.

We have unscrupulous people, and an adoption is different in 1978 than it was in 1948, and I think we have to address ourselves to that. Children are the priority, and the children are beautiful.

As I tell our parents, kids grow up and become obnoxious teenagers, "How are you going to handle it, then?"

However, in this particular case, this particular girl after another month of counseling decided maybe she could keep the child herself.

However, in the course of the counseling, she said to me, "Well, what criteria do you use?" I showed her, that we want a good, stable marriage, and we thought it was important.

So, many people are saying the things that we felt are important, important in an Indian home. Indian homes, I love the Indian people and I love the Eskimo people particularly, and I have been in their homes, and I understand what this bill is addressing itself to, and I am glad that it has come about in 1978.

However, in any home they need continuity and love, and the reason why I am so strongly attached to this particular part of the early adoption at an early age, I feel some of the research done on the

Indian children could be redone and find out where were the children from prenatal to 2 years of age.

To me, that is where the damage is done. The child learns more in the first year of life, and grows at three times the rate, emotionally, physically, and mentally, and it is that 1 year of life that is so important.

So, this is why we are saying this particular girl now, saying to herself, "Maybe I can keep the baby." However, what if she decides, and this baby has not been born yet, what if she decides she would like to give up the baby?

That baby would have to go to an Indian home or Eskimo home according to the legislation as I read it; am I wrong?

Mr. TAYLOR. I would like to interrupt just a second. With respect to the observation that choices voluntarily made would be destroyed by the mandatory provisions of sections 102 and 103, you are talking about the placement of Indian children, or the triggering of the preference revisions of section 103.

Sister MARY CLARE. Right.

Mr. TAYLOR. Both of those sections have requirements in the absence of good cause to the contrary being shown. This opens up an entire evidentiary framework for the court to take testimony under.

I think, Sister, and you and I talked at some length the other day. I can see why people would be frightened by this legislation and the possibility of it being read in the fashion that you are. I think some amendatory language is necessary to clarify the discretionary aspects, but it certainly is not the intention of this legislation, and none of the witnesses here today have so indicated, to prevent the possibility of Indian children being adopted by non-Indians across the board. It is a preference.

The point about the young unwed mother being unable to waive notice being tendered to the tribe, we also discussed the possibility of an amendatory language there, and, again, the witnesses referred to that, and I think those recommendations will be considered.

Sister MARY CLARE. Thank you, very much.

There would also be a lack of cultural purpose for those who have voluntarily moved away from a particular culture, perhaps living in a different part of the country.

Mr. RONCALIO. Let us take a break now. I do not think we are going to be able to finish up.

We will return here at 1:30. So, if you and Mr. Mitchell would be out here one hour from now, I will try to be back here, too.

We will recess until 1:30.

AFTER RECESS

Mr. RONCALIO. The subcommittee will resume its hearing.

We have reached a solution to our negotiations on presenting the Sioux on the floor with Mr. Cohen of Maine, and it is scheduled now to come back to the floor, and I am the floor manager of that bill. I may be summoned out on a 5- to 10-minute notice.

If I should have to leave, I will ask the statements of Frazier, Harris, Ranco, and Letendre be put in the record.

Please summarize for us, Sister Mary Clare. We will put the entire statement in the record.

Sister **Mary Clare**. We talked about confidentiality, and unnecessary delay and expense. Section 101(c) sets us certain restrictions on relinquishments which are unnecessary and may be harmful.

Currently, Alaska law allows a parent to relinquish to a licensed agency. Pending H.R. 7200 would also permit this. No court appearance is required. It is our experience that a sympathetic social worker is better able to explain the consequences of adoption than a judge especially if such a consent must be taken in the forbidding confines of a courtroom.

Alaska law provides for a 10-day period for withdrawal of consent to a relinquishment. A longer period may be acceptable but the decision for all persons concerned needs to be made within a short time so as not to disrupt the lives of children who are placed with prospective adoptive parents. Thus, withdrawal of consent any time before the final decree is too long.

The provisions barring consent within 10 days of birth can be a hardship to a girl who wishes to return to her home upon discharge from the hospital. The ability to withdraw a consent should be sufficient protection for her rights.

Section 101(d) is a good provision which we support.

This statement is based upon my experience in Alaska in dealing with voluntary relinquishments. We do not have tribal courts in Alaska nor are we involved in forcible termination of parental rights. Even in such circumstances, however, we believe that the bill should be changed to insure the preservation of the right of choice and of confidentiality.

For your information, I would also like to submit for the record a copy of Alaska's adoption law, and a brief regarding the constitutional implications of the bill in the areas of right to privacy and equal protection.

We do believe the subcommittee ought to look at the constitutional implications of this bill.

[Editor's note.—The documents referred to above may be found in the committee's files.]

Mr. **Roncalio**. We recognize both of those in your statement, and they will be admitted into the record.

Sister **Mary Clare**. Thank you, very much.

Mr. **Roncalio**. Mr. Mitchell? What is RURALALCAP? I thought it was a native corporation.

Mr. **Mitchell**. Sort of. My name is Donald Mitchell, and I formerly was associated with the Alaska Legal Services Corporation in Alaska, which, almost by the process of abdication by other forces, is the primary provider of civil legal assistance to almost all native villages throughout the State.

I, at one time, supervised that agency's office in Bethel, which was an office with two paralegals with responsibility for providing services to some 56 primarily Yubik Eskimo, but also Indian villages.

I was made a director of the Alaska Native law project and devoted my time exclusively to rural Alaska Native issues. I have been involved in countless child placement situations involving native children in Alaska, several hundred undoubtedly.

I was also counsel to two native women who brought the landmark Alaska Supreme Court case which for the first time gave judicial recognition in Alaska of traditional native adoptions.

I am now associated as a consultant for the rural Alaska community action program on rural native issues. The rural Alaska program is a statewide CAP agency for Alaska. The board of directors of that agency is composed of representatives of the native regional nonprofit corporations, rather than profit corporations, which I think is a crucial difference for those not overly familiar with the situation. RURALALCAP has been involved in the villages in a number of areas there. They are the State agency for the Head Start program throughout the bush.

They provide immunization programs and have been involved in some subsistence activities. I am testifying not only on their behalf here today, but on behalf of myself and from my own personal knowledge of how this legislation, if enacted, would affect rural Alaska.

I would like to say in that regard that I could not think of national legislation, moreover, due to prevent the breakup of native homes and to protect the rights of native children than this particular piece of legislation.

I, like everyone who has worked on their feet in the area of a native community, I have my list of horror stories, and if I had a longer period of time, I would be happy to share them with you.

But, I have a couple of technical comments on the bill as we go along that may be helpful to you. I took a look at the Senate testimony very briefly, and I noticed that with the exception of an associate of mine from Bethel, and Mr. Jeffrey from the Legal Services Offices in Barrow, and also Mr. Tippleman, there has really been a lot of comment on this problem from Alaska, and I think that in terms of some of the logistics involved, I would advise you to survey the situation very closely, because you do have some real logistical problems up there with this.

Turning briefly to the text of the bill, I notice that section 101(a) provides that there be 30 days' written notice to parents prior to placement activities taking place. I am very much in favor of that, but I would point out that it has been my experience that the preoccupation of our culture and our legal system with an equating written notice with the due process does not apply, in my judgment, in most Eskimo communities.

Eskimo culture is primarily a rural culture, and I have seen immense amounts of damage done by agencies that have, in fact, given a written notice to people out there. I guess the prime example of that is that we do a lot of—when I was legal services—we did a lot of adoptions that tried to recognize de facto cultural situations that were already taking place.

There is a lot of cultural adoption out there. That is a complicated process, but I had a long letter that I sent to parents who had already relinquished to other family members, saying that the other member could get papers saying you have given them up, and here is what it means, and so forth, and on more than one occasion, I have gotten back from natural parents perfectly executed consents, stamped by the postmaster, along with a letter saying, "We don't want to have our child be adopted. That child is staying with my brother, and he has been there 4 or 5 years, but we don't want this adoption to go forward," along with perfectly executed consents.

I relate that to you to show that it is dangerous to believe that by giving someone written notice, we are off the hook.

Second, I notice that subsection (b) of that section talks about poverty, alcoholism, et cetera, not being prima facie evidence of neglect or abuse or whatever. I would be interested in expanding that to include other members living in the household.

I have been involved in certain situations in which the parents were in no way within that particular—did not have any of those particular problems—but there were older children living in the home, very substandard housing in Alaska, so you have a lot of people and a lot of overcrowding.

I have been involved in situations where children have been taken out of homes because an extended family member, who was not actually the custodian of the child, was living on the premises and had a history of these kinds of problems.

I do not know whether that is taken care of in the bill or not, but I think from technical drafting, it would be something to consider.

Mr. **Roncalio**. Are you talking about subsection (d)?

Mr. **Mitchell**. "B" as in Bozo the Clown, or something like that.

Mr. **Roncalio**. All right, sir.

Mr. **Mitchell**. Third, I would say that subsection (c), which talks about voluntary consent, I think my recent example of that would indicate where it is very important to make sure that consent is informed.

I think that in terms of technical drafting again, although I think an informed consent may be part of a voluntary consent, nevertheless, I am interested in making it clear that consent has to be informed consent.

Mr. **Roncalio**. Does not the affidavit of the judge that knows it was given and explained in detail——

Mr. **Mitchell**. That covers the problem, except for the one I am going to open up now. In Alaska, there is quite a bit of work in terms of trying to legally date existing cultural adoptions, and to try to bring all the parties together before a judge, as, for instance, there is one judge in Bethel for 56 villages.

The judge does not travel. It would be a physical disaster.

In the Barrow area, I do not believe there is a judge at all now. There was a magistrate for a while. That magistrate has resigned, and I do not know if she has been replaced. That means the closest judicial officer is in Fairbanks.

I would suggest that this problem arises only when you are trying to validate a cultural adoption, and I think if you put something in the bill that said consent did not need to be executed before a judge if the adoptive parents were within either part of the extended family, or even were just the same native group, or lived in the same area.

I think you could deal with that problem and then when you got into it, where you were involved in a situation where there was a consent to an adoption where a child was going to be placed outside the area, with non-Indian parents, then you do need that judicial review, and I would support that wholeheartedly.

But I wanted to caution you that everything is not as monolithic in Alaska's programs as it is elsewhere.

The second thing I would say is that I wholeheartedly support that ability of a woman or a father to invalidate a consent long after the 10 days has elapsed. In Alaska, and under Alaskan law, you have 10 days within which to say, "Hey, no deal, I am sorry, I changed my mind."

Once that 10 days elapses, what the parent is involved in then is in a best interest struggle with a third party. The burden is then on the parent to come in and say that the child's best interest is in having the concept terminated. That requires counsel and an appropriate timing, and an incredible amount of headache and heartache, and I would say that it is unconscionable for a parent to meet that burden merely because they missed the date in Alaska law, and I would be happy to see you override them on that.

I would say that an issue that is very crucial to this whole situation in terms of what I have already called "Kiddy ripoffs" in the native community, is the right to counsel. I know it is indicated in the bill a number of times that among the things that the money could be used for would be more legal assistance, that the parents would have an opportunity to counsel.

I am not sure precisely what an opportunity means, and if we are talking about a family which lives in Olurkanuk on the coast of the Bering Sea somewhere and they get a letter saying something has happened to their kid, what do they do?

There they are, they have no money, they are on the end of the mail plane run; they operate a telephone that they share with four or five other villages that may well be down.

Half of them don't know whom to call anyway. It is a very serious problem, and I would love to see something in the legislation that says that parents have an opportunity for counsel and they are counsel which are not present, there has to be something on the record that indicates why they are not.

You know, is this another thing where they got notice and didn't know what it meant, or they got notice and couldn't get it together, or didn't know where to go for help? Some way, they have to be accountable on that.

Mr. **Roncalio.** I am in a dilemma. I am going to get in trouble with the Sioux. The Sioux are closer to Wyoming.

If the witnesses who have more will wait, let's finish making the record of our case here. We only have three more witnesses. I will come back as soon as I finish these Sioux bills. Maybe I can do that in 30 minutes, but I have to go to the floor.

It is very important legislation. It entails whether they are entitled to interest on the fifth amendment taking of the Sioux Black Hills. They got an award but now they do not have interest on it.

Mr. **Mitchell.** I think a number of these concerns could be addressed to the staff in any event, and I would like to continue to do that.

The other thing I would do is to say that the business of notice, every time there is a change in placement, that is a very important provision of this legislation. I have been at a custody hearing with a

State, and the State was at a loss to explain where the child had been 3 or 4 years.

Parents have sent children in for medical treatment in Anchorage and have never seen them come back. To have that kind of tracking to a child, I think, is crucial to the situation.

I would also point out that you have a real problem in Alaska, the problem of what is tribal, and who should get notice.

This problem is being dealt with in other legislation, and it is a real problem in Alaska, because you have villages that have never been part of the reservation system, they don't have a tribal organization per se and you have inside of those villages regional corporations, village corporations, village nonprofit corporations, regional health corporations.

Who gets notice, I think, is a very technical question that should be looked at in terms of particular notices to be given.

In some instances, I think notice to the village may be appropriate. In other instances, you might want to provide a way in which notice could be given maybe to the regional health corporation, which is, in Bethel, a very active group, and in Nome, even more so.

In another native region, they may be well organized or less well organized, but I think where they are in operation they should be used as much as possible.

I would urge you to go in terms of administration to a regional level, and in terms of notice of a particular child, to make sure the village is also informed as well as the parent.

One of the parts of this legislation that I, again, wholeheartedly support, is the preference hierarchy setup for adoption. That, to me, is a side in the issue of the State taking away children on various theories of neglect and abuse. I think the adoption question is very, very crucial.

I have been involved in situations in which pregnant women have left their village.

I imagine all of you know, but at least in native culture, the family has much more to do with what is happening, and the instance in which a native girl, who is in a village who escapes the village pregnant without anybody knowing it, or without her parents being involved in some way is relatively slim.

I do not say it does not happen, but generally speaking, it is a family situation, and if you look at most of the cultural adoption situations that have gone on there for thousands of years, they are situations in which single women traditionally give up their children to their own parents, or to perhaps a brother or sister of their parents, and it is a family community situation.

So I think that the bugaboo about private situations is a valid concern, but that at least in the Alaskan culture, to my knowledge, is not an overriding concern.

But, anyway, as I was saying, I am familiar with the situations in which the extended family put a daughter on the mail plane to go to Anchorage to have a baby and the daughter and the baby never returned, and I didn't get to that village for almost a year thereafter, and nobody knew what happened.

No one ever told them or gave notice to them. They wanted that baby.

Now, as it turns out, that particular family—back to this prima facie business, had a history of involvement with the welfare department and alcohol abuse—you know, the old story—and if you had taken that one up, they would not have had a prayer.

They had a brother of the grandmother involved who lives in one of the satellite communities, who was involved with the mental health program there, and would have been a dandy parent to that child, and express some interest in it after he was told the situation. What is his problem? No understanding?

He does not have any right to go in there and say, "Put on the brakes, I want the daughter of a member of my extended family."

I think this kind of legislation would solve some of that. In terms of the issue of mothers who voluntarily relinquish, they will tell you another story about that, or I can tell you a story about it.

A woman left a village and had the option of going to Bethel or to Anchorage to have her baby. In Bethel, a prematernal home is run. She has a sister living in Anchorage, and she let a social worker talk her into a facility there that she thought was similar to the Bethel prematernal home.

I, eventually, bumped into her, and what was her major gripe? She wants to go home. The people were trying to make her give up her baby.

OK. It turned out that this was, while it was not a facility for unwed mothers, there was a lot of counselling going on there. What was her problem?

She was 17 years old and pregnant. She also like to hang out and go honky-tonking once in a while, and so did I when I was 17.

She would have had a prima facie social problem because she showed up pregnant. I investigated that with the administrators, and the line was "Oh, though we don't make anyone give up their baby. All we do is have people come in and explain the alternatives and what is involved in having a child," and trying to provide them with enough information to do what is right.

I am not assailing the good faith of those people at all, but they are doing that in a white culture, based on a white counseling experience, and she wanted out. "I made a decision not to give up my baby, and I do not have a problem and I want to go home."

The amount of aggravation with that institution and the State—she essentially got out of there. I bring it up to show that the voluntary relinquishment for native women is not as cut and dried as you think it would be.

I think in that kind of context, I think that the wishes of the extended family certainly are entitled to some equivalent amount of respect.

In terms of title II, which I also think is very well intended, and I support it wholeheartedly, I would hope that subsection (a), and I do not know precisely what it is intended to include, but, for instance, on the North Slope they have chosen up there not to become involved with a regional health corporation, to my knowledge, rather because they have something to tax much to their credit.

They form a borough and tax it, and the borough is the primary facility through which they ran a variety of social services that are all for the most part Eskimo run, and I would hope in terms of being eligible to have a facility such as those that are authorized in this title, that we include them as well as regional corporations and others.

I would say in looking at the list of things for which money can be used, a couple that come to mind are, of course, foster homes. There is no greater problem in the bush than the problem of State licensing of foster homes. For the most part, village people have been given prefab houses that have one entrance. That is a violation, and all kinds of health problems. Licensing most native homes in the bush under State laws is difficult, and we have looked at it for years and nobody has done anything about it.

This would be an excellent way to provide people with the opportunity to do that.

Another thing that comes to mind is the training of natives for child welfare jobs, and my experience in Alaska has been that the decisionmaking of the State welfare agencies has always been controlled by white professionals, which I am sure comes as no surprise.

What they do use, however, are native paralegals, and the paralegals essentially are involved in sort of running out and being the gophers into the villages, and translating for the MSW's in terms of trying to figure out what to do about a particular social problem.

There have been a number of difficulties dealing, at least within my personal knowledge, in dealing with the State department of health and social services in terms of getting a real commitment from them to get Native people substantively involved in social welfare activities.

I would commend that section to you, but I would say that I have thought about it in great detail, but I think it would be helpful to really make a commitment by State agencies to get involved in a State like Alaska, where we are stuck with State administration for a long while.

The last thing under that section that I would like to touch on again is legal representation. A real problem out there is the fact that it is all one law club, and no matter how many attorneys you put out, essentially every time there comes to be a time for some agency to provide money for legal services, and Alaska legal services won't like this very much, I don't think, but every time that kind of money becomes available, what happens is that they contract with Alaska Legal Services, which provide a way to get more money and lawyers, and God knows, they need it, but the problems you get into are conflicts, because everybody belongs to what is legally the same law firm.

So, you get involved in situations where there are children involved, and somebody needs to represent the parents, and maybe the public defender might represent somebody, and maybe he won't, and maybe you have represented the parents in another matter that might go to their fitness, and the whole thing is a mess.

Mrs. Foster. In the interest of time, if you do not mind, can we have the benefit of your input on the detail in the language of the bill dealing with the nonprofit corporations at a later date?

Mr. Mitchell. I am sure, Mrs. Foster, that that was my last analysis. So you caught me as I was trailing out the door.

I would say only that it is a real problem, and I would encourage you to figure out ways to allow other organizations, the regional health corporations, et cetera, to become involved in contracting for legal assistance so that there is at least another law firm in the bush that is not involved in conflict difficulties.

Once again, I wholeheartedly support this effort, and anything we can do in the future to iron out some of these technical problems, please feel free to call upon us.

Mrs. FOSTER. I would never cut you short, except I have the feeling that you will be available to us again.

Do you have any questions?

Mr. TAYLOR. I do have a question relating to the definition section on page 5 of the bill, where we define "reservation." It is section 4(g).

We have included in that definition all the traditional Indian country in the lower 48, and two or three other areas, and land held by Alaska Native villages under the provisions of the Alaska Native Claims Settlement Act.

When we get into the jurisdictional aspects of this bill, the question has come up as to the viability of what we have done here. I wonder if you could express an opinion on that?

Mr. MITCHELL. I think that bringing Alaska Natives within the purview of this legislation is extremely critical, and I think two ways to do that are to indicate that native land in Alaska is, for this purpose, is reservation, and also to acknowledge that native villages in Alaska are in fact tribes.

I sort of stayed out of the jurisdictional problem because that is a well-known thicket that I could bore everyone with for hours.

Mr. TAYLOR. Do you see the inclusion of this language in the definition of reservation as a necessary inclusion, or should it be modified?

Mr. MITCHELL. I would like to think about it. I think if you included Alaskan villages and Alaska Natives within the definition of "Tribe," you might be able to skirt that one.

One of the problems you have in the Settlement Act is that in its wisdom Congress tried to make everyone State-sponsored capitalists, instead of acknowledging that this is, in fact, native land.

It happens that it is as much private land as the house I live in in Anchorage. It happens to be owned by certain people who are natives. The land itself is no different than a regular old private estate land, and I have no problem with it, and I think that it makes it clear that we are talking about Alaska Natives, and there is no argument to be made that they are not going to benefit in this, but, again, it is part of the real problem that the Congress stated in its wisdom when it got us off the native track and onto the corporate track.

Mr. TAYLOR. In terms of jurisdictional provisions, though, do you consider this workable?

Mr. MITCHELL. I think in terms of the jurisdiction provisions, there is a movement afoot in Alaska for native people to start asserting jurisdiction when—well, I would say this is totally my personal view, that on a village basis it would be very difficult for the villages logistically to, you know, 200 villages, to start asserting all kinds of jurisdiction.

I think on a regional basis, especially when you look at the regional nonprofits and the regional health corporations, if there were a way to draft to permit them to exercise some of these jurisdictional functions and get them off the total status of the present, I think that would be an excellent thing to do.

I know right off my head that Bethel, Kotzebue, and the North Slope have facilities to start working in that direction. Other regions are not as well organized yet. But I would approach jurisdiction on a regional basis rather than a—I would approach it on a regional basis, but that is something I would be happy to talk to you about in detail later.

Mr. Taylor. We do not have a written statement from you, and I wonder if you could give us your mailing address.

Mr. Mitchell. Mrs. Foster is in touch with me, and I would be happy to stay in touch with you.

Mr. Taylor. Fine.

Mrs. Foster. Let me raise this question, and you possibly could not address it here, but does not jurisdiction usually attach itself to a specific tribunal or a specific area and, if you were to establish a number of courts or lesser tribunals in Alaska for child welfare proceedings, would that tribunal or panel not have to have a specific geographic area within which it would exercise the jurisdiction? Would that not create a problem, because all of Alaska is a reservation?

Mr. Mitchell. All of Alaska for certain purposes is treated as a reservation, but in terms of the way service delivery is now being organized on a variety of levels, everything seems to be filtering through the regional boundaries established by ANCSA.

They operate within the boundaries of the known regional profit-making organizations, and that is true in Bethel and Billingham, and the Slope has always confused me because of their organization there.

Another way to do it might be to do it on a statewide basis and have regional input from there. It is a subject that really needs to be thought over, and the 638 mess has people thinking finally.

Mrs. Foster. Thank you very much.

Don Reeves—and you are accompanied by Jan Harmon.

Mr. Reeves. I am a farmer from Nebraska. I am on the staff of the Friends Legislative Committee. Jan is a colleague there, and is a joint appointee between the Friends and the Mennonites. My wife, Barbara, would have been here except for a death in the family, and this is a joint statement of support for the Indian Child Welfare Act out of a fairly intense personal experience.

Plane schedules and weather permitting, I will be at the State reformatory in Nebraska tomorrow morning at 7 o'clock to take Rick home. Rick is one of three adopted Indian children in our family, and I thought I could do this.

Mrs. Foster. Do you want Jan to give the testimony for you?

Mr. Reeves. This isn't in the written testimony.

Mrs. Foster. Take your time.

Mr. Reeves. The thing that I want to talk about is the absolute importance of early, stable, loving relationships in the childhood of any individual.

Rick was 3½ when he came to our house, and when he was taken by the State, he and several older brothers and sisters were picked up in a supermarket about 2,000 miles from home; and in those circumstances they were living by their wits.

The home that we were able to provide for Rick, we were never able to overcome some of the experiences that he went through during those first 3 years of his childhood.

Now, it seems to me that this early, stable, loving, relationship, and I use those three words advisedly, is almost independent of the culture or the community in which youngsters find themselves, and there is a kind of relationship that ought to be interfered with only as a very last resort.

I think that there are things that the extended family and the community can do to support what happens in families, and so I am pleased that in this piece of legislation, what I see as the first line of defense is the kinds of services that would support the family relationships—family counseling, the temporary kind of support that can get families over these kinds of situations, homemaking services, health care, day care, and the other kinds of services that can make it possible for a family to keep the children in that circumstance and create the kind of home that every child deserves.

I believe that the decisions, at least I hope that the decisions about the kinds of services that are needed by particular families will be made by the communities that they are part of, and not imposed on by rulemakers from some other quarter.

I think this is in quite sharp contrast to what has been national policy, at times very explicitly, at times programs unintended, when the dominant culture has said in effect to the Indian communities that, "Your traditions and your values you know, they are not right," and the rules have been set up so that Indians were not free to set their own standards.

The effect of this was to break down the Indian communities and the Indian families.

So it seems to me that the effect of U.S. policy has resulted in certain circumstances in which Rick started out and in which we, you know, just were not able to overcome.

So that I see as really the most important part of this bill is to reinforce the family circumstances of the Indian families and the communities they are part of. In those instances—and there are going to be instances into the future—that some families may not be able to cope and take care of the youngsters. Then I think it is appropriate that the decision about those youngsters needs to be made again by the extended family, by the community, by the people who are closest to that family, and not imposed by a foreign culture.

So that we are very supportive on the basis of our experience of both halves of this bill.

We would like to commend Congress for this kind of approach to this set of problems.

The final thing I would say is the importance of adequate funding for this measure. It does not make any sense to create a mechanism that could work and then deny the resources that would bring it to fruition.

I don't have the competence to judge whether $26 million will be enough. It might be enough for the first year to get it started, but it would be a calamity if the mechanism were put in place and then in subsequent years the only way it could be kept going would be to take money from existing programs which provide some of the very kinds of support for families that are not in place at this point.

I assume that the written testimony will be entered in the record.

Mrs. Foster. Do you have any questions?

Ms. Marks. I would like to express our thanks to you for coming over and sharing your testimony with us today.

Mrs. Foster. Thank you.

We will call the last panel, which is panel 4: Gregory Frazier, Vera Harris, Mike Ranco, and Suzanne Letendre.

Which one is Gregory? Do you represent AL-IND-ESK-A and the National Urban Indian Council?

[Combined prepared statement of Vera Harris and Elizabeth Cagey may be found in the appendix.]

PANEL CONSISTING OF: GREGORY FRAZIER, EXECUTIVE DIRECTOR, AL-IND-ESK-A CORP.; VERA HARRIS, ACTING DIRECTOR, TSAPAH CHILD PLACEMENT AGENCY; ELIZABETH CAGEY, ADMINISTRATIVE ASSISTANT, TACOMA URBAN INDIAN CENTER; AND MIKE RANCO, EXECUTIVE DIRECTOR, HEALTH AND SOCIAL SERVICE, CENTRAL MAINE INDIAN ASSOCIATION

Mr. Frazier. Yes.

Mr. Chairman, members of the committee and staff, my name is Gregory Frazier, and I am the executive director of the AL-IND-ESK-A Corporation. The AL-IND-ESK-A Corporation is the nonprofit management arm of the 13th Regional Corporation, 1 of 13 such corporations formed under the Alaska Native Claims Settlement Act—Public Law 92-203. There are currently between 4,000 and 5,000 Aleuts, Indians and Eskimos of Alaska enrolled in the 13th Regional Corporation, all of which are residing outside of the State of Alaska.

We strongly encourage the House to pass the Indian Child Welfare Act of 1977 as this is a much-needed piece of legislation and should provide the funds available to Indian and Alaska Native organizations throughout the United States so that they may act to protect the interests of native American and Alaska Native families.

The hearings of April 8 and 9, 1974, chaired by Senator Abourezk, pointed out the necessity for this particular piece of legislation and the problems confronting native American and Alaska Native families in the absence of such Federal support. The individual States are not addressing this problem in a realistic manner and this Federal responsibility should not be delegated to the States.

I would like to skip over to paragraph 2 on page 5.

The article included in here is my responses made this morning by HEW and realistically the BIA also, and our efforts as an organization to secure funds to finance such types of operations.

The Indian Child Welfare Act—Senate bill 1214, as it is now written—would not extend to all Alaska Natives. This is because the Alaska Native regional corporations have been deleted from the definition of "Indian tribe" and, in particular, the 13th Regional Corporation. The declaration of policy in the act as it is now written states that it is the policy of the U.S. Government:

> In fulfillment of its special responsibilities and legal obligations to the American Indian people, to establish standards for the placement of Indian children in foster and adoptive homes which will reflect the unique values of Indian culture, discourage unnecessary placement of Indian children in boarding schools for social rather than educational reasons, assist Indian tribes in the operation of

tribal family development programs, and generally promote the stability and security of Indian families.

For the purposes of the act, an Indian is defined as "any person who is a member of or who is eligible for membership in a federally recognized Indian tribe." "Indian tribe" is defined as—

> *** * * any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for services provided by the Bureau of Indian Affairs to Indians because of their status as Indians, including any Alaska Native villages, as listed in section 2(b)(1) of the Alaska Native Claims Settlement Act.**

None of the members of the 13th Regional Corporation are members of any of the Alaska Native villages listed in section 2(b)(1) of the Alaska Native Claims Settlement Act, and therefore these Indians, Aleuts, and Eskimos of Alaska, enrolled in the 13th Regional Corporation would not be recognized as Indians for the purposes of this act. This definition is inconsistent with the declaration of policy; therefore, it should be amended.

We are proposing the following amendment for the definition of an "Indian tribe" for the Indian Child Welfare Act:

> **Indian tribe means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided by the Bureau of Indian Affairs because of their status as Indians, including any Alaska Native villages listed in section 2(b)(1) of the Alaska Native Claims Settlement Act (85 Stat. 688, 697) and the 13th Regional Corporation.**

An alternative method of correction would be to change the wording of 4(c) back to its original form, in agreement with the definition of "Indian tribe" in the Indian Self-Determination and Education Assistance Act (Public Law 93–638) and the Indian Health Care Improvement Act (Public Law 94–437).

In summary, we would strongly encourage the House to pass the Indian Child Welfare Act of 1977 and amend the act as suggested so as not to exclude 4,000 to 5,000 Aleuts, Indians, and Eskimos of Alaska that are currently enrolled in the 13th Regional Corporation.

Mr. TAYLOR. Could you tell us what the definition was originally?

Mr. FRAZIER. It was consistent with 638 before it went through the Senate, and it was in the Senate markup that it changed.

Mr. TAYLOR. All right. Was that definition similar to the one that is used in the Indian Health Care Improvement Act?

Mr. FRAZIER. Yes.

Ms. MARKS. Mr. Frazier, my understanding at this time is that there is a serious discussion going on as to the jurisdictional powers of the regional corporations, and that there is legislation which has been presented to the Congress to attempt to clarify the role of the regional corporations.

Am I correct in assuming that this was the reason that that section was originally deleted from the bill, not an attempt to keep regional corporations from contracting, but an attempt to clarify the role of regional corporations in terms of establishing tribal courts or a comparable tribal agency?

Mr. FRAZIER. That may have been the intent. I am not sure it was the intent at the same time to exclude 45,000 Eskimos, Aleuts, and so forth, who are not enrolled as members of the village corporations in Alaska.

The 13th Regional Corporation is made up of nonresident Alaskan Natives, and I would say includes 97 percent of those who reside outside the State of Alaska currently. But your legislation on any child welfare act, as it is now written, would include that.

Mrs. **Foster.** Would you enlighten me? The 13th region, are they now getting help on education?

Mr. **Frazier.** No.

Mrs. **Foster.** But they come in under that definition of Indians, not as native Americans, the other 12 regional members?

Mr. **Frazier.** Wait—you are using the word "Indian," that they have to be members in a tribe which is a village corporation, and these people are not members of a village corporation but of a regional corporation. Subsequently, would you not recognize them as Indians in this legislation?

Mrs. **Foster.** Are the members of the 13th Regional Corporation getting any benefits under the acts you mentioned here as 13th Regional Corporation members?

Mr. **Frazier.** Not that I know of.

Mrs. **Foster.** They are getting, then, under the definition of those acts which limit the—wait, I understand it. It includes anyone who has quarter-blood.

Mr. **Frazier.** I assume that is correct—437 has not been implemented to date, so I cannot address that issue; 638 in its implementation and its administration—or administrative implementation—right now addresses the issue of Alaska, and these people are outside the State of Alaska, so I feel fairly safe to say that it is not affecting them directly.

I asked the Bureau of Indian Affairs' social service representative, at a recent conference in Fairbanks, what he would do—and this is the agency that is contracted out, I believe—what he would do for an Alaskan woman in Chicago who came in contact with the court and was in the position of losing her children. He said, "There is nothing they can do."

Mrs. **Foster.** AL-IND-ESK-A could qualify as an Indian corporation and get funding that way?

Mr. **Frazier.** I think there is a point of law that when you take something away, and you have taken away recognition, and you have set your limits and definitions within 1214 to exclude this group, and you are setting these individuals back from a position that they occupied before, that being a member of a tribe for the purposes of 638 and 437, that is, to be an urban Indian, and thereby the benefits of an urban Indian program.

Mrs. **Foster.** I was not attempting to say what should be, but I was asking, as matters now stand, it would be possible for AL-IND-ESK-A, an urban Indian corporation, to get funded in some sort of a program?

Mr. **Frazier.** I would say it is possible, but it is more likely remote because of the logistical——

Mrs. **Foster.** All right. I will turn it over to Pete.

Mr. **Taylor.** I am looking at a version of S. 1214 as it was enacted out of the Senate, and they scored out the original.

So I would like to read section 4(c) of the version which I gather was originally introduced in the Senate. The definition of "Indian tribe" means "any Indian tribe, band, nation or other organized group or community of Indians, including any Alaskan Native region, village or group, as defined in the Alaskan Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status of Indians."

Is that the definition you would prefer to see?

Mr. Frazier. That is correct.

Mr. Taylor. And it refers to services provided by the United States and not just the Bureau of Indian Affairs?

Mr. Frazier. That is right.

Mr. Taylor. I would have one other question in view of the change we are contemplating.

Approximately how many members of the 13th Regional Corporation reside outside of Alaska?

Mr. Frazier. Ninety-nine percent. I think there are five or seven that reside inside of the State of Alaska now.

Mr. Taylor. What numbers are we talking about?

Mr. Frazier. 4,000 to 5,000 enrollment in the 13th Regional Corporation.

The second piece of testimony I would like to present is on behalf of the National Urban Indian Council representing the National Urban Indian Council, and I would like to discuss with you today urban and off-reservation Indians.

As American Indians and Alaska Natives we have been subjected over the years to a myriad of philosophies, programs, and policies that have been, in my opinion, specifically designed to facilitate the indoctrination of our people to the white, Anglo-Saxon beliefs and way of life. The social dysfunctions resulting from these practices have manifested themselves in acutely high alcoholism rates, suicides, high school dropouts and chronic unemployment, all of which have contributed to our inability to achieve social and economic self-sufficiency or self-determination.

We can trace the beginnings of these practices to the Allotment Act of 1887. Maximized, this would have ended reservations and the native family would have remained as separate families and individuals within the various States. This program remained in effect until the Indian Reorganization Act of 1934 and its Alaska and Oklahoma supplements in 1936.

Generally, this act was to revitalize tribal organizations and native community life through the strengthening of tribal leadership and the formation of governing bodies. Although the method of assimilation may have changed, the goal remained the same.

The prevailing philosophy after the allotment experience was that assimilation would occur more rapidly if the Indian community were again encouraged to take their places among the many local communities throughout the Nation. During the 1930's, following one of the recommendations of the 1928 Merian report, a program was undertaken to secure employment away from reservations for young Natives graduating from BIA schools.

During World War II as a result of varying pressures, it is estimated that 65,000 native Americans and Alaska Natives left the reservations to take their places in the armed services or to find employment in war industries. In the fall of 1950 the BIA decided to extend its relocation activities. In the early 1950's the BIA opened field relocation offices in Chicago, Los Angeles, Salt Lake City, and Denver. In 1953 the BIA suggested that not less than one-third of those natives being relocated were returning to their reservations.

The termination policy era of 1953 to 1958 was again aimed at assimilating natives, but on a more rapid basis. House Concurrent Resolution 108, passed in the 83d Congress of 1953, specifically named tribes that were to be terminated at the earliest possible time.

Public Law 280, passed in 1953, was again regarded by some as one of the major developments contributing to a reduction in the Federal responsibility in Indian affairs. Briefly, this law gave the States jurisdiction over criminal and civil matters.

Fortunately, the termination policy slowed during the 1950's and early 1960's. Native leadership in the country as well as others recognized the devastation termination would cause to the Indian way of life and Indian culture. A report in 1961 entitled "The Task Force Report" called for a shift away from discussion of tribal termination programs. Members of the task force recognized that Indians considered the Bureau's relocation program as a primary instrument of the termination policy which they universally feared. It was, therefore, recommended that increased emphasis should be put on local placement with a much higher degree of cooperation between the BIA and local agencies and that the name of the BIA Relocation Services be changed to Employment Assistance.

The number of relocation offices increased from five to eight. Then from the time that the BIA's relocation services began in 1952 until it ended in 1967, it is estimated that over 61,000 Indian people had been given help toward direct employment. Further, the BIA estimated in 1967–68 that approximately 200,000 Indians had moved to urban areas in the last 10 years.

Now, let us take a look at some of the statistics to see where we, as Alaska Natives and native Americans, were at the early part of the 1970's:

1. Estimated projections from the 1970 Census suggest that nearly 500,000 native Americans and Alaska Natives reside in the urban areas.
2. There are between 20,000 and 28,000 Alaska Natives in the Lower 48.
3. The unemployment rate for native Americans and Alaska Natives is apparently no better in the urban areas than it is in the nonurban areas.
4. In instances, a minimum of 25 percent of all Indian children are either in foster homes, adoptive homes and/or boarding schools against the best interests of the families and Indian communities.

Although I stated previously that termination as a policy slowed to a stop during the 1960's, it is apparent that assimilation was and still is the goal.

Recently I was conversing with a non-Indian professional social worker about the Indian Child Welfare Act, and particularly as it relates to urban Indians in their contact with State welfare systems. She told me:

> We must remember that the non-Indian social worker operates on a Western European, white, Anglo-Saxon thought construction. This is the basis for their training. Consciously or unconsciously, for them assimilation is the goal.

Without clear Federal policy such as that proposed by the Indian Child Welfare Act, attitudes such as these can only be expected to prevail.

We now have nearly 500,000 Indians in the cities or off the reservations subject to these attitudes and having their families broken up and culture dissipated.

We would, therefore, strongly urge that policy, as reflected in S. 1214, and appropriations be made available to urban Indian centers so that they may begin to address those areas of child welfare affecting 50 percent of our native American and Alaska Native populations, that the States and governmental agencies have been neglecting and, therefore, recommend the passage of the Indian Child Welfare Act.

Thank you.

Mrs. FOSTER. That is a very good statement, if I may say so.

Do you have any questions?

Mr. TAYLOR. Yes. I am not sure that anybody can give an answer that goes beyond speculation, but I think it is a question that we really have to ask.

What you are saying in this statement is that roughly one-half of the Indians in this Nation are not receiving services as Indians. If we expand the scope of service delivery, and we had a lot of discussion about this on the American Indian Policy Review Commission, how many of the 500,000 who are presently outside the ambit of our service population—how many of them as a practical matter would be seeking services? Would it be 500,000 or are we talking figures that are substantially less?

Mr. FRAZIER. Pete, I am not capable of determining how many angels you can put on the head of a pin.

Mr. TAYLOR. The Policy Review Commission could not do it either.

Mr. FRAZIER. The Federal Government has a trust responsibility for these 500,000 Indians, and at this point in time it is not living up to that responsibility. What gets down to the urban areas is peanuts, and those people living in the urban areas.

Let me give you an example. The Division of Indian Manpower Programs over in the Labor Department has a budget of over $200 million. 15.9 of it goes to the urban programs. Administration for Native Americans has a budget of about $33 million, of which 5.4 goes to the urban areas. This is peanuts compared to a 50-percent population distribution.

The analysis that we took by our individual people in the regional corporation that I work for in one city indicated that there was a lack of knowledge of what does exist. The Federal policies that are in existence say—the Indian Health Service for the State of Alaska says once you move out of the State of Alaska, you are no longer eligible for health care services after a period of 1 year, which is similar to the policy applying to the reservations. Very little is being done.

This particular piece of legislation could alleviate some of the problems that exist in those urban areas. Individuals are subject to—individual tribal members are subject to a myriad of administrative policies, depending on which State they are in, and there is really little alleviation of the problems and anxieties that are caused by those prevailing policies, and as the white social worker said, "the white Anglo-Saxon, Protestant thought construction."

I am aware of few urban programs in the country that are attempting to address the problem of foster care and adoption, and in their efforts to get the funds necessary to address those problems they run into a jungle of administrative procedures to the point where we finally had to go out and seek it from a private foundation in hopes that this particular piece of legislation would make it through the Senate and the House and ultimately filter down.

I am a little concerned that if we go to the Bureau, they have not traditionally responded to the urban Indians, but as it is written now, it is fairly clear that there is availability in the legislation. For that reason we are advocates for its passage.

Mr. **Taylor.** I might add for the record that we had discussions at the Bureau of Indian Affairs very recently, and the question was raised since the title II programs at the urban level are talking in terms of grants, not contracts and not Bureau programs, what problems that would be raised for them administratively. Would they have to create new agencies and what sort of additional staff they would have to put on; and the answer I receive was that it would require relatively minimal staff additions, which I think is an important thing to have in this record.

Mr. **Frazier.** I ran an urban center for about 3 years and contracted with the BIA. Their administrative policy is there, and if they are concerned, I will be glad to provide what technical expertise we can find and help them out.

Ms. **Marks.** Greg, could you address for 1 second the issue which has been brought up by HEW and also by the Bureau about how the notice provisions, the tribal notice provisions specifically, and some of the preference categories in this bill reflect the lives of urban Indians?

There seems to me an opinion within HEW and by some people in the Bureau that once Indians move to an urban area, they are sometimes severed from their tribal relationship and that this would be an infringement on that.

How do you feel about this from the people you have worked with? Would it be an infringement and, if it is, how can it be dealt with?

Mr. **Frazier.** The foster care program and the adoptive program that I am associated with, I immediately contacted the tribe whenever a member comes into the purview of this program. To my knowledge this has not presented a problem in the past. The tribe has responded immediately that one of their people is in trouble in an urban area, and that there is an urban area there.

Ms. **Marks.** If I might interrupt you, the point is being constantly made that that is an infringement on the Indian parents living in the urban area to have their tribe notified. I would like you to address this for the record, if you could please.

Mr. **Frazier.** I can see where those arguments might come up from the standpoint of basing the argument on the assumption that the Indians wanted to move to the cities to start with, to get away from the reservations. I think if one takes a good look at Federal policy over the last 50 years, you will see that they were encouraged to leave the reservations and subsequently those people who reside in the urban areas may or may not feel infringed upon if asked to communicate with the tribes.

They are there for reasons other than those that they chose to be there for. Let's face facts. Federal policy has been getting the Indians into the white world and the best way to do it is pump them into the cities.

Ms. **Marks.** Thank you.

Mrs. **Foster.** Greg, if you had a choice between seeing urban Indian programs administered by HEW or Interior, which would be your preference?

Mr. **Frazier.** Let's put it this way: I had hopes that the American Indian Policy Review Commission's recommendations with respect to reorganization of the Bureau of Indian Affairs and the changing attitudes within the agencies that are now governed by new administration will reflect a little bit more humanistic attitude toward dealing with urban Indians, and in that context I would say it is six of one and half-dozen of the other.

Mrs. **Foster.** Thank you.

Next is Vera Harris.

Ms. **Harris.** Thank you. I appreciate the opportunity to appear before you.

I am Vera Harris, and this is Elizabeth Cagey. We respectfully submit the following recommendations for rewording or change of areas of this much-needed legislation as the current wording will cause great hardship and misunderstanding when implementation becomes a reality.

Definitions: (i) Parent: Must be revised to include only Indian adoptive parents.

In one particularly horrible case the adopted Indian girl was raised to believe all Indians are ugly and worthless. At the age of 14 she mothered a new son. This young Flathead woman is now in a Washington State institution attempting suicide and classified as chronically alcoholic. The non-Indian adoptive parents under Washington State law have been allowed to throw her away and keep her child. They have all of the rights of natural grandparents and no efforts of tribal or urban Indian agencies have had an effect on his continuing placement in this destructive family unit.

The young woman has legal custody, but believes she is bad, and if the child remains in the home, they may love her again.

Section 101. (C) Temporary placement and/should be allowed if certified by an authorized agent of a tribal court. Voluntary consent is often an emergency for medical treatment or a mental health crisis.

Case A: A young woman appears in a hospital emergency ward with her tiny 2-year-old and 4-year-old children. She has brought her children's clothing with them. She is in labor and has no help at home. There are no responsible adults available. She has no time to go to a tribal court, the attendants at the hospital take care of her children until a Tsapah [or tribal] caseworker arrives and the consent form is later signed authorizing emergency placement.

Case B: A Singleton parent [a young woman] goes into the Indian community clinic for a routine medical appointment. She has left her four children with a neighbor for a couple of hours. An hour and a half later she is in a local hospital awaiting surgery. Her children range from 15 months to 4 years of age.

Before she left the clinic, she requested a voluntary consent form for placement of her children and left emergency instructions on how to find her children and a few of their belongings. Without the mechanism for immediate assistance she would have had one more set of problems to deal with, and our foster licensed homes would have both been in violation of the law and denied payment.

Section 102. (h) This series of exceptions must only apply to juveniles 16 and older, or not to remain off reservation for over 90 days. The tribes must receive notice 15 days prior to transport of child, the nearest reservation/urban child welfare program must be contacted in advance for the purpose of coordinating support services.

Example: The Jesus Christ Church of Latter Day Saints has included in its program children in the 5-to-7 age grouping and many of these children spend several years off reservation. Some children are so acclimated into these placements that they are, in effect, adopted. Community alternatives could/would be adopted or developed to these out-of-community placements if adequate dollars were available for tribal [community] services.

Bureau and denominational [primarily Catholic] boarding schools are able to recruit children [separating family units] because of the racism of local school districts and a lack of reservation [community] supports.

Section 102. (i) Except cases where temporary wardships have been filed with State courts and tribes wish to assume those wardships.

On some reservations all families who have been on public assistance have been forced to agree to State wardships for their children before securing basic life support. The new wording could be interpreted to mean a previous wardship, however secured, would constitute authority to continue with placements or adoptive plans.

This section also includes cases where tribes have tribal registers of adoptive parents and the State courts [agencies] are anticipating adoption without regard or respect for these tribal resources.

Foster home recruitment by Indian agencies has been successful, but most of these families will not register with State agencies. We believe the same is and will be true of adoption registers. The State agencies are being allowed to say they have searched the State registers and their non-Indian placements are legal because our families haven't placed their names on these registers.

Washington State has passed recent legislation, but the effect is simply new boards forming and the State hiding behind confidentiality laws withholding information from those boards and using their registers to withhold custody.

Section 202. (B)(6) Funding must be included to meet the needs of transportation, emergency custody, and communication assistance for both urban and reservation programs to provide emergency and scheduled supervision and care of children going home to another tribal jurisdiction. This bill calls for extensive referrals of Indian children to their primary governmental jurisdiction, but does not cover the costs of phone calls, office and casework support, crisis or scheduled care, transportation and supervision, et cetera.

There is no mechanism provided for urban programs or tribal programs to sit in on State court proceedings for the purpose of monitoring or forcing the implementation of these new laws. With any child in a current wardship status the doors will be closed in the name of confidentiality and we will find ourselves totally helpless to provide protection to our children or services for returning them to their reservations if custody is secured.

Section 203. (A) The Office of Child Development and the Social Rehabilitative Services agencies of HEW region 10 have been indifferent and unhelpful. The only helpful agency has been HEW's Indian Mental Health Services, specificially John Bopp, M.S.W. Serious consideration should be given to keeping these funds within the Indian Health Agency under 638 with the headquarters—Rockville—administrative management working with both tribes and urban centers.

Section 301. (a) Confidentiality cannot and must not apply to tribal governments, courts or social work agencies. The Bureau as the rights protection trustee should have prevented the alienation of Indian children all along and should not now be controlling files needed by these tribal agencies. There is no possibility of urban Indian social work agencies doing their work in conjunction with the Bureau of Indian Affairs. Many of these lost children are second generation Bureau of Indian Affairs relocation program victims and the Bureau is very defensive of this program.

Mrs. FOSTER. Thank you on behalf of the chairman for very constructive and specific illustrative testimony, Ms. Harris. It is very moving.

Let me assure you that we are going to go over every one of these amendments, such as yours, and really see what we can do to come up with a proposal for this committee which would incorporate as many of these things as we can.

In the opening statement the chairman said that this is a working vehicle.

Ms. HARRIS. We have one more.

Mrs. FOSTER. Yes.

Basically these things will all be worked over very carefully.

Ms. CAGEY. I am an administrative caseworker for a child placement agency. I work in conjunction with the Tacoma Indian Center and the Puyallup Tribe.

On S. 1214 the tribe in urban communities needs direct funding to take care of needed services that will come with the responsibilities of this bill. The dollars earmarked or proposed for this program are inadequate. Our service population is 7,000 and the census recognized only 3,200 at approximately $26 per child. This would provide $83,200 for this entire county.

We need an emergency care center with staff, caseworkers, office facilities, staff, equipment and office services, vehicle, dollars for transportation, group homes for long-term care, family and juvenile recreation space, indigent fund for emergency food, clothing and transportation, training dollars, and emphasis on the training dollars, law enforcement dollars, and lay workers.

We are advanced in our services, but we would require a grant base of at least $200,000 for facilities and equipment. There are many communities that require much more to serve a population of this size. We have started with no help except the CETA program, positions that can only last 18 months. Once the staff is trained, there is no money to continue.

We need a national policy for Indian child placement and adoption, supportive services, crisis intervention. Indian health is much more supportive than the BIA. We find many of the cases we have referred to us from the Department of Social and Health Services and the Juvenile Department also often have mental damage.

The communities need direct funding. A special amendment to title XX—and have read this proposed Washington State plan from the State Advisory Committee. The statement is that they do not recognize the sovereignty and jurisdiction of the tribes in the State of Washington.

One alternative would be a comprehensive Indian Social Services Act.

The child placement agency demonstrates that the responsible Indian foster parents can be found for Indian children and that it is possible for them to remain within the community. We have a full-time person to recruit stable families to provide foster care.

A couple of last comments: As for Sister Mary with the Catholic Social Services, there are no words in the Indian country, the Indian language, their hearts and minds, for an illegitimate child since we have known. They are all with us and represent our future. We have no word or definition for an orphan, either because of the extended family fact or otherwise.

I have one last question.

I would like to know how the Mormons have been given the right to a special meeting tomorrow to propose amendments to S. 1214. I thought this was an Indian Child Welfare Act of 1977 session, not a religious, political, or monetary issue.

Mrs. Foster. Thank you.

I would like to respond to your last question. I think it is a question. Have the Mormons been given that? I am not aware of the Mormons or Latter Day Saints having a special meeting.

Ms. Cagey. There is one going on tomorrow, because Mrs. La Pointe sits on that panel. I was questioning the fact that they are allowed to come in and get a congressional special meeting for amendments to S. 1214.

Mrs. Foster. I do not know what you are referring to, but for the record I would like to state that on this legislation, S. 1214, the Subcommittee on Indian Affairs and Public Lands has received massive amounts of mail for and against. All that mail is looked at and scrutinized by the subcommittee staff, and it is open for anyone who wishes to visit the subcommittee and read the letters that come in, to see if they would like to react and give the opposite points of view.

All letters that come in to the committee are not part of the record. Only these things that are placed in the record in a proceeding of the subcommittee are placed in the record, but they are part of the files, and they are public files.

The staff has in the course of preparing for this legislation met extensively with members of the other congressional staffs. I have spoken on the phone, for instance, with the members from urban areas and the staffs of the members from urban areas, and I think it is appropriate at this time, without objection, to ask that there be inserted in the record a letter from Congressman Dellums and Congressman Stark supporting this legislation.

[EDITOR'S NOTE.—The letters referred to have been placed in the committee's files.]

Mrs. FOSTER. And I see a letter here from Minneapolis, which I think makes a pertinent statement.

[EDITOR'S NOTE.—The letter from the Upper Midwest American Indian Center has been placed in the committee's files.]

Mrs. FOSTER. I think that makes a pertinent statement regarding this legislation.

The staff notified Congressman McKay, who has a large number of Latter Day Saints in his district and who was a witness on the Senate side of this hearing, and asked on behalf of the chairman if he wanted to testify. He declined to testify at this hearing.

If his members wanted to submit letters to the committee, they would be considered equally with everyone else.

Ms. MARKS. If I could make a statement in response to this on the Senate side, because I think there has been a decision, I think I am speaking for Gravel as well—the staff has attempted to work with all interested organizations, Indian and non-Indian, who deal on a regular basis with Indian children.

We have, however, in dealing with the notification provisions, specifically with religious groups, redrafted that section, working very closely with the Latter Day Saints. Also, however, we have worked with NCAI and NTCA and other urban Indian organizations here in Washington, and we have attempted to keep sending this bill out for comment, and we would appreciate any comments that you would have as well, and we are going to be receptive to everyone because the most important factor I see with this bill is developing something that is going to work.

If we are going to take a chance of developing something that is going to infringe on the constitutional rights of an individual to exercise, for example, their choice in sending their children to a Latter Day Saints or other comparable educational facility, we are going to get in trouble. So I think that we are open to any suggestions that you would like to send in later on.

Ms. CAGEY. I wondered why they had this special meeting. If that is what they are worried about, they have organizations of their own. Why don't they let us have ours?

Mr. TAYLOR. In the original bill we had, I think it was section 104 (h) with the notice requirements on these programs where Indian children are recruited, LDS is one and there are others, too, but LDS is the one most commonly known.

Congressman McKay testified in our hearings on the Senate side and it resulted in a modification of the language in that section. I think he was basically satisfied with that language. We plugged the LDS language into the program.

Frankly, the language of that section remained very confusing because there was a double negative in it, and I could never understand it, even though it was explained to me five times. So Patty and I worked out an amendment to it to try to make it more clear.

I think that we have supplied that to Congressman McKay's staff and it is possible there will be some discussion about that tomorrow. I am not familiar with it, but I have a typed version of what Patty and I have redrafted which I would expect to have in the bill. There is a Xerox in the back and I will run back and see Xerox copies.

It would be section 104(h). I will submit it for the record here today.

Ms. **Cagey**. Will you people be here tomorrow for the meeting?

Mr. **Taylor**. If there is a meeting taking place, I would certainly want to come over.

Mrs. **Foster**. The staff is available after this session. The subcommittee is finished with its own business, but will discuss meetings with anyone who is not going to be traveling away and would like to discuss the bill with the staff in addition to what is happening here this afternoon.

At this point I would call the next witness. That is Mike Ranco.

You are director of the health and social service for the Central Maine Indian Association.

Mr. **Rudolph**. He is executive director. I am David Rudolph, the director.

Mr. **Taylor**. This is 102(h). That is a correction.

Mr. **Ranco**. There was a storm in the Northeast that held up Suzanne, who could not be here because of the weather in Boston.

Mr. Chairman and other members of the committee, I am Mike Ranco. Accompanying me today is David Rudolph. The Central Maine Indian Association, based in Orono, Maine, was organized to address the needs of Maine's off-reservation Indian population in the southern 15 of Maine's 16 counties.

First, I wish to indicate that in speaking for my people we endorse the spirit of this legislative effort. This action is long overdue and much needed if we are to be able to protect our heritage, our children.

NEED STATEMENT

A little over a year ago the board of directors and the general membership of Central Maine Indian Association (CMIA) determined that foster care and adoption services, as presently administered, was one of its major problems. We are losing our children and our heritage through a subtle process of disenfranchisement.

At the time of the vote supporting the establishment of this as an objective to be addressed, eight of the nine-member board had been affected by the Child and Family Welfare Service of Maine, mostly in adverse ways and circumstances. At that time neither the board nor the staff were quite aware of the extent to which the Indian population of Maine was affected. Now we know significantly more and are appalled.

Just a few of the data statements will show something of our population "at risk" and the extent of the problems:

1. Off-reservation Indian children, zero to 19, comprise 52 percent of the off-reservation Indian population in Maine.

2. Of this population 32.8 percent of the children are under single-parent supervision as compared to the State's average of 15.9 percent, and they seem to be the most vulnerable.

3. Family size among the Indians averages 3.8 as compared to Maine's average of 3.16.

4. The unemployment level for our population is around 47 percent as compared to the latest known non-Indian Maine figure of 7.8 percent.

5. The rate of placement of Indian children placed into the child welfare system is 7.58/1,000, second only to Idaho, which is 7.75. This is taken from a study of AAIA. Meanwhile, the non-Indian placement rate is .40/1,000—four-tenths of 1 percent. Even a staff person of the State's Department of Human Services admitted that the rate of placement of Indian children was 19.1 percent higher than that of non-Indian children.

I have attached that statement to my testimony. It gives details.

6. The last known figure regarding location of placement showed that 92 percent of our children were placed in non-Indian homes. Often these placements occurred 100 to 300 miles from his or her home because few licensable homes existed nearer. Also, the distance, being greater, was felt to be a deterrent to the tendency of the child to run away from the foster home and back to his own home. It should also be noted that there are only three Indian homes, as far as we know, that are licensed as foster homes in Maine.

7. Apart from rate statements, statements of how many children are "at risk," we do not know how many children are placed annually or the current aggregate number who are "lost" to our people, who have been disenfranchised by the system. The latest annual placement figure given by DHS was 82 for 1975. The latest aggregate estimate can be well over 300 to 350, but we do not know.

We don't know because there is no systematic accounting of our "lost" children by DHS. However, we do know it is becoming a major problem to the non-Indian community because of the loss of identity on the part of the individual. Many of these individuals are now long-term recipients of the larger welfare system, including the legal and "correctional" system's services.

8. Finally, and probably most importantly, the Indian children who will not benefit from the legislation as it now stands will be the children of Indian families who live off-reservation. It is estimated that, according to the latest figures available, in Maine 80 percent of all placements of Indian children occur in Aroostook County.

Mrs. Foster. Where is Aroostook County?

Mr. Ranco. In the northern part of Maine.

Mr. Rudolph. As far north as you can get.

Mrs. Foster. Thank you.

Mr. Ranco. Not one of these families lives "near" its reservation. From all indications that we have, as the initial results are showing from our recently funded research and development grant, these are the families at greatest "risk" with the least supports available. This legislation will not, as it stands, help change this situation, which affects far greater numbers of children than those who are on federally recognized Indian reservations. In fact, we understand that better than 60 percent of all North American Indians live off-reservation and only a very small portion of this population might be positively affected by this legislation. Because of these facts regarding our problems we offer the following recommendations:

Suggested changes: 1. The definition of "Indian":

On rethinking our position and having gained a greater understanding of the needs of our people, we would offer that the definitions of "Indians," "Indian tribe," "tribal organization," "urban Indian," "urban center" and "urban Indian organization" should be the same as that adopted for the Indian Health Care Improvement Act. Those definitions are attached without changes to this testimony.

The key one is that regarding "Indians" which I would like to read into the record:

> SEC. 4. (c) "Indians" or "Indian", unless otherwise designated, means any person who is a member of an Indian tribe, as defined in subsection (d) hereof, except that, for the purpose of sections 202, 203, and 302, such terms shall mean any individual who (1) irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is descended, in the first or second degree, of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is considered by the Secretary of the Interior to be an Indian for any purpose, or (4) is determined to be an Indian under regulations promulgated by the Secretary.

2. Increased Funding: As we have discovered in the development of our "Northeast Indian Family Structure * * *" research and demonstration grant, the problems of Indian children and family welfare are far more complex, far more of an "epidemic" proportion than we were aware.

I would like to add here, that our project was one of eight funded nationally to look into the child welfare system, and of the eight the northeast project is the only one that has a research component.

We would recommend very strongly that the program envisioned, which we find much needed, by this legislation needs greater funding resources than planned. It is our feeling that maybe as much as a 50-percent increase might be more appropriate to address the problems. More realistically, but not sufficiently, we could see a minimum of 20–25 percent increase at least to begin to help the Indian people to deal with the problems of family disintegration and make reunification of the families a more realistic possibility. Where more funds need emphasis is in the area of prevention efforts which would be directed to the purpose of keeping the families together.

With regard to cases, I would finally like to take a brief moment to recount just a few of the cases of child welfare with which I am familiar.

Case A: Micmac Family of Eight. The mother was dying of cancer and the father was suffering from alcoholism when the Maine State Health and Welfare took the children, ranging from 8 to 14 years of age, and placed them in separate foster homes. Two serious incidents happened to this family.

The 8-year-old girl was placed in a home 12 miles from her parents. She repeatedly ran away to see her parents. The Department's solution to this situation, without regard to the emotional crises the child was going through, was to relocate the child some 300 miles away from her parents. The status now is that the child was adopted and is in New York State somewhere, now totally disenfranchised from her parents and culture.

The other incident involves the oldest of the six children who is now 21 years old. She was to visit her 18-year-old sister who was still in a foster home. The foster parents refused visitation rights to the older sister. She was also not allowed to communicate with her sister by phone or letter. She contacted our office for assistance. I called the placement supervisor and he told me that the foster parents did not want the older sister to disrupt the environment and the new culture of the child. At our insistence a meeting was allowed, but the foster parents had to be present.

These two examples reflect the problems encountered while the children were in the custody of the State. This is just for one family. We have other examples.

Case B: My Own. The last example involves my brother and sister and me. We bent the system, so to speak. The State attempted to remove us from my mother. As a result, we went underground for 2 years, living and moving among our relatives both on and off the reservation, but without State support. The reason for that is that we didn't want the State to know where we were.

Ten years ago I had to hire a lawyer in order to gain permission for my younger brother to stay with my grandmother. The State tried to say she was not fit to care for my brother because of her age. Our lawyer showed that she had raised and cared for 5 children, 23 grandchildren and 13 great-grandchildren. Today we are still a close family in spite of State rules and regulations that are aimed at total family destruction.

A final note not in the written testimony is that I have two children of my own, and I have had three children, ages 2, 3 and 6, who were placed in my home, and the children—the mother is an alcoholic and the mother is in alcoholic treatment and she got out the other day. We are in the process of reuniting her with her children again.

If we did not intervene, the children would have been lost.

Thank you for the opportunity to use these few moments to present the Maine Indian child and family welfare case to you. If you have any questions, I will be happy to answer them to the best of my ability.

Thank you.

Mrs. FOSTER. Thank you. I regret the chairman was not here to hear your very personal testimony. I will show it to him, and also I am sorry that you had to go through wind, storm and all kinds of weather, and I am glad you made it here.

As I told you on the phone earlier, I know your part of the country well because I live up there in the summers.

Do you have any questions?

Mr. TAYLOR. Yes; I need to go into this issue again about the expansion of service population. Mike, were you at the meeting at Interior the other day?

Mr. RANCO. Yes.

Mr. TAYLOR. I note you are calling for an increase of 50 percent, but a lesser figure would be 20 to 25 percent.

Taking the 50-percent increase figure—and I am thinking also of the population statistics that you indicate, that 40 percent of Indians live on reservations and 60 percent live off—would the 50-percent increase in funds be adequate, do you think, to expand the service population into the areas that you are proposing and maintain the services proposed in this statute at the level that we are proposing them?

Mr. Ranco. If I recall our meeting, it was a very delicate point to talk about. The very issue that the BIA brought up is that it is only a big enough pie for a certain amount of menus, and the point we made was, first of all, the amount of money that we requested should not reflect the broadening of the definition. The definition, in our opinion, is another issue.

I wrote an emotional paragraph that day, because I was real upset, that again in my opinion it was an attempt to use dollars as a divisive mechanism, again by the BIA, to get the off-reservation Indians fighting with the tribal groups over the same piece of pie, the same old pie game.

If I can make a point for the record, we believe that the issue is again the definition of "Indian," and that is totally different from the amount of money to be allocated, and I can't make that any stronger. We should look at the need of the children first, and let's decide on the dollar amount.

If I decide from that meeting—$26 million which was proposed in this legislation was kind of picked out of the air, and I think that kind of opens the doors to what we can really look at realistically to implement this act, and I think to be realistic about it, we should look at the needs, and all the staff knows well of the documentation available on child welfare.

I think we should reassess the dollar amount that was already present and suggest a little bit bigger amount, disregarding the definition.

Mr. Taylor. I know what we talked about at BIA, and I felt free to go into this area because I was pleased to see that you had included in your statement a request for an increased authorization, which I think is very realistic.

Ms. Marks. Mike, are you familiar with any organizations which have done statistical analyses of need? We were unable to really find out. What we went by basically was existing requests and an attempt to generate how many numbers of organizations and tribes would want money, but do you have any ideas of how we can get better determinations of funding need? If you have, I would be very receptive to seeing them.

Mr. Ranco. Most of the studies which have been done represent our judgment on them. We looked at them again before we came down, and we think 2 percent is more conservative and realistic without a particular funded project which is just to research, and particularly in the Northeast. Like in our statement of testimony, there are not many programs that are going into research.

The HEW onsite people came to Boston and told us that they weren't concerned about the statistics. They were more concerned about case studies that would really be more of an impact.

I think you should look at the data that are available again.

Mrs. Foster. When were services initiated to the Passamaquoddy and Penobscot Tribes? I was under the impression that you were now receiving services from the Indian Health Service and the BIA.

Mr. Ranco. So far they are only words.

Mrs. Foster. The court decision said you were entitled to services.

Mr. Ranco. You have to understand the bureaucracy and how it functions. The printed word, you can't eat them, and there are still tielines involved. Indian Health Service won't be coming in until this

April, to the reservations, and the BIA is now, you know, beginning to set up some programs.

Mrs. Foster. So you received moneys in fiscal 1978?

Mr. Ranco. There are fiscal 1978 moneys.

Mrs. Foster. But they have not been received? This is the planning and development grants?

Mr. Ranco. This came from SIS, the money. The money allocated for our demonstration and research is totally different from the Federal services now being set up for Maine Indians.

Mrs. Foster. The programs are supposed to be set up?

Mr. Ranco. I guess.

Mrs. Foster. The Indian Child Welfare Act and the Indian family development program, can you see that could be administered better by the Bureau than by HEW?

Mr. Ranco. I have a little freeze because I was reacting to whether it would be better to be served by one or the other. It is like asking whether it is better to be burned by the fire or the flame.

Mrs. Foster. Someone said the figure of $26 million for title II was taken out of thin air. I think it is fairly easy to take any figure as an authorization out of thin air and put it into the bill. The real problem comes when you go and get that same figure appropriated.

My question really led to the fact that, in your opinion, would funds become available soon if you tried to obtain them for grants under this section from HEW or through the Bureau?

Mr. Ranco. OK. From the meeting we had with BIA, if we can maintain the possibility for all Indian people to benefit from a child welfare program, they keep it as a grant and use the precedent of the Indian Home Improvement Act, to insure that all Indian people will receive the benefit from this act.

Mrs. Foster. Of course, the Indian Health Care Improvement Act has yet to be fully implemented.

All right. That answers my question.

Do you have anything further?

Mr. Taylor. Nothing further, but off the record a moment.

[Discussion off the record.]

Mrs. Foster. On the record.

We are about through with the hearing.

This concludes for today the Subcommittee on Indian Affairs and Public Lands hearing on S. 1214 until further notice.

[Whereupon, at 3:30 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

INDIAN CHILD WELFARE ACT OF 1978

THURSDAY, MARCH 9, 1978

House of Representatives,
Subcommittee on Indian Affairs and Public Lands,
Committee on Interior and Insular Affairs,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 1324, Longworth House Office Building, Hon. Teno Roncalio (chairman of the subcommittee) presiding.

Mr. Roncalio. The Subcommittee on Indian Affairs and Public Lands will please come to order.

We are meeting today to continue hearings on S. 1214, the Indian Child Welfare Act of 1977. The bill was entered in the last hearing record. This is the second day of our hearings, and we want to clarify in our bill the jurisdiction to be established and the situation of the placement of Indian children, which we feel is deeply needed.

We will receive into the record today information to help us in this effort, from my colleague from Utah, Gunn McKay, and Don Fraser, my colleague from Minnesota. We will also receive evidence from the Department of Justice and hopefully some BIA material to help us with our deliberations.

We have a number of groups that are here with us.

Is Mr. Gunn McKay here, or is his statement for the record?

Without objection, we will enter Mr. McKay's prepared statement in the committee's files of today's record.

[Prepared statement of Hon. Gunn McKay may be found in the committee's files.]

Mr. Roncalio. I believe the essence of his statement is there would be no objection to the changes which we have discussed.

Is Robert Barker here?

Mr. Barker. Yes, Mr. Chairman.

Mr. Roncalio. Do you intend to give a statement, Mr. Barker?

Mr. Barker. I would be glad to at the end of the hearing if it would be appropriate. It might save time if I came near the end after the others have testified.

Mr. Roncalio. All right.

Is Mr. Don Fraser here?

I do not see Don.

Did anyone hear from Don's office?

[No response.]

Mr. Roncalio. Larry Simms, attorney/advisor, Office of Legal Counsel, Department of Justice.

[Prepared statement of Larry L. Simms may be found in the appendix.]

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STATEMENT OF LARRY L. SIMMS, ATTORNEY/ADVISER, OFFICE OF LEGAL COUNSEL, U.S. DEPARTMENT OF JUSTICE

Mr. Roncalio. We have a copy of your statement. We would like to insert it in the record verbatim and ask you to either read it, if you wish, or comment on it, either way.

Mr. Simms. Mr. Chairman, I think it might save you time since the statement itself adds nothing to nor subtracts from the letter addressed to Chairman Udall on February 9, to simply touch on a few points and then answer any questions that the committee may have.

Mr. Roncalio. All right. Please proceed.

Mr. Simms. Initially I would like to convey both Mr. Harmon's and Deputy Assistant Attorney General Lawton's regrets that neither of them could be with you. Both of them are deeply involved in looking at legal questions in conjunction with the Taft-Hartley injunction problem. They both send their regards.

Mr. Roncalio. They are very busy, I know.

Mr. Simms. Also, I would like to apologize on behalf of the Justice Department and the administration that our views on the constitutional issue raised by this bill have been so late in coming.

As the chairman is aware, the bill passed the Senate on November 8 without the Senate having been provided with our views on this question, which I think is unfortunate, and we certainly are responsible for that. We hope they have now been provided to Chairman Abourezk on the Senate side and, of course, to this committee.

I think I would make only two points in regard to the prepared statement.

The first point is that we are entering an area with respect to the classifications drawn in this bill where there are no clear decisions one way or the other as to whether or not the kind of line-drawing and kind of classification done by the Bureau would or would not be held constitutional by a court.

We are having to draw on decisions, some of them very recent, some of them a bit older, which——

Mr. Roncalio. Are you referring to the *Mancari*, *Fisher*, and *Antelope* cases cited in the letter to Mr. Udall? And they are in here?

Mr. Simms. Yes; they are.

Mr. Roncalio. I see.

Mr. Simms. Those decisions in our view indicate that the courts, in particular the Supreme Court, would scrutinize very closely a classification that was drawn solely on the basis of race, and in this particular case we think that the bill would set up a possibility for people being classified solely on the basis of the amount, the percentage of Indian blood, or the fact that they were non-Indians or Indians.

We are particularly concerned with the former classification. To simply give you a hypothetical, one can imagine two families living on a reservation where the children of that family both had significant contacts with the tribe, one had the requisite percentage of Indian blood to be eligible for tribal membership and the other one did not. The status of the parents could go any number of ways. You could have a situation in which a child was living with one parent who, in fact, was a non-Indian.

Under this bill, as we interpret it, and as the Department of the Interior understands it, the parent of the child being eligible for membership in the tribe would be deprived of access to the State courts, assuming, of course, that the State had jurisdiction over family relations matters in the first place. Whereas, the second child would have access to the State courts. It is this discrimination that——

Mr. **Roncalio**. Do you have a suggestion to eliminate that situation from the bill?

Mr. **Simms**. Yes, sir.

Mr. **Roncalio**. Would you tell us that?

Mr. **Simms**. We think it would be very simple to add a provision to the bill insuring that tribal jurisdiction over family relations matters were had only with the consent of the parent. It is as simple as that.

Mr. **Roncalio**. Yes.

Mr. **Simms**. In other words, if the parent consents to have the tribal court take jurisdiction, the problem is completely eliminated in our view.

Mr. **Roncalio**. Have you discussed the draft that BIA has planned as a substitute to the bill?

Mr. **Simms**. No, sir, I am afraid I have not.

Mr. **Roncalio**. I think it will be in there. We will look for it to be there.

Thank you, Mr. Simms.

Mr. **Ducheneaux**. Mr. Chairman, if I might.

Mr. Simms, are you aware of the Interior Solicitor's Office commenting on the issues that you have raised here about the invidious discrimination point?

Mr. **Simms**. Yes, sir. We held at least two meetings before this opinion was rendered, at which the Solicitor's Office was represented. We have had discussions with them. They sent followup views after the last meeting, which was in very early January.

Mr. **Ducheneaux**. Do they share your views on this?

Mr. **Simms**. It is possible that they do not. I can give you a specific example in one of the meetings I attended at which the Solicitor's representatives were present. It was their view that the case of *Morton* v. *Mancari* would support this particular discrimination—that is, the classifications that this bill sets up. I made the argument, which I think was never adequately answered by the Solicitor's Office, that language in *Morton* clearly bases the court's rejection of the equal protection argument on the fact of tribal membership.

Mr. **Ducheneaux**. Getting to that point then, Mr. Simms, are you familiar with the Maryland Court of Appeals case, *Wakefield* v. *Little Light?*

Mr. **Simms**. No, sir, I am not.

Mr. **Ducheneaux**. That is a case in which this exact point was drawn into question. The question was the domicile of the child involved. In *Wakefield*, the Maryland Court of Appeals said,

> We think it plain that child-rearing is an essential tribal relation within the case of *Williams* v. *Lee*.

The bill, as it is currently drawn, provides that "Indian" means any person who is a member of or potentially eligible for membership in Indian tribes. The bill directs its attention toward Indian children.

Mr. **Simms**. Yes, sir.

Mr. **Ducheneaux**. Both the *Wakefield* court and the *Fisher* v. *District Court* case—the Supreme Court case—consider that child-rearing is an essential tribal relation, which both the tribe and the United States as trustee have an interest in protecting; and that includes eligible Indian children who are members of the tribe or the child who is eligible for potential membership in that tribe, does it not?

Mr. **Simms**. I would assume that is correct.

Mr. **Ducheneaux**. If you follow the *Wakefield* case and the *Fisher* case, it would seem to result that the tribe had a very legitimate interest in protecting the welfare, not only of children who are members of that tribe, but children who are eligible for membership in that tribe. Is that right?

Mr. **Simms**. There is a leap there between the two, and I doubt *Fisher* stands for that proposition. In *Fisher*, the tribe involved there had, by its own tribal ordinance, assumed jurisdiction over family relations matters only over members of the tribe. There was no attempt whatsoever by the tribe in that case to assume jurisdiction over family relations matters of Indians who were not members of the tribe.

Mr. **Ducheneaux**. We are taking the language of the court now within the *Williams* v. *Lee* case, where the court says that the State cannot have jurisdiction over an Indian reservation where they affect an essential tribal relation.

So, if we take that doctrine of the central tribal relation and apply it to the point you have raised and, if we accept the fact that Indian children who are eligible to be members of an Indian tribe form the potential membership of that tribe, then the tribe has a legitimate interest in protecting and preserving their welfare.

Mr. **Simms**. I suppose the question you are raising gets to the point made at the very end of the letter to Chairman Udall. Assuming, as we do, that a court would apply a stricter standard of review than it had to apply in the *Fisher* case and in the *Morton* case and in the *Antelope* case, the question would be whether the interest that you have identified, which most certainly is a legitimate interest, would be deemed compelling enough to overcome what is clearly a classification based on race.

It is our judgment that, with regard to the protection of children whose parents for whatever reason have declined to have the tribe protect the interests of their children by seeking to have family relations matters determined in a State court, we would have great difficulty in concluding that the interest you have identified supervenes or overcomes the interest of the parents.

Mr. **Ducheneaux**. Let me read one final statement, Mr. Simms, in the *Fisher* decision, where the court said: "Moreover, even if a jurisdictional holding occasionally results in denying an Indian plaintiff * * *."

I realize we are dealing with, in this case, a member of a tribe, but the court does not distinguish that.

> * * * an Indian plaintiff a forum to which a non-Indian has access, such disparity treatment of the Indian is justified because it is intended to benefit of the law and furthering the congressional policy of Indian self-development.

Do you think that that makes any difference to the position you have taken here today?

Mr. **Simms**. The court does, of course, go on to cite the language that I rely on in *Morton* v. *Mancari* at the end of the quote you just read.

I think it is clear that Congress has a great deal of latitude to define what the Indians' interest in self-development is and is not. Certainly the *Oliphant* decision recently handed down by the Supreme Court makes that much clear.

Mr. **Ducheneaux**. It makes it clear that the Congress could in certain circumstances delegate powers or give or confer on the Indian tribes jurisdiction over non-Indians, does it not?

Mr. **Simms**. I think it clearly does.

Mr. **Roncalio**. Is the problem not a problem of discrimination against the parent, not the child?

Mr. **Simms**. That is the point we make, and I think we make very strongly. I think that that raises an issue which I am really not prepared to discuss fully.

I have glanced very quickly through one of the reports—it looks like a very excellent report—that has been submitted on this problem. The report takes the position, or makes the statement, that the family relations within the Indian community are a very different thing. It suggests that State domestic law gives the parent the kind of property interest in the child, that is, apparently at least according to the report, not recognized in Indian communities and the tribe itself.

The tribe itself has a great deal of interest, institutional interest, in the upbringing of a child. I think what we see there is the clash of two philosophies that may be very different, and how a court would deal with that when the court finally had to decide I am not prepared to speak to.

But I think it is a difficult problem. I think it is at the heart of our problem.

Mr. **Roncalio**. Are there further questions?

Mr. **Taylor**. Just a couple.

The question you raised about denial of access to State courts, I assume when you raise this issue, what you are talking about is the provision in the bill that would allow a tribe to request a transfer of jurisdiction out of the State court to the tribal court?

Mr. **Simms**. Yes, sir.

Mr. **Taylor**. And adding language that the consent of the parent would be required to solve any constitutional problem?

Mr. **Simms**. It may go beyond the specific example you gave in the sense that I think that under the bill we can be involved with more than a simple transfer. It would be involved with an initial assumption of jurisdiction over the child by the tribe even in the absence of a State court proceeding. So it would include both.

Mr. **Taylor**. The recommendations you made or that Interior has advised us of are related to the transfer provisions.

Mr. **Simms**. Yes, sir.

Mr. **Taylor**. OK.

The other question I have on this: Following Frank's line of interrogation on this *Perrin* case, which I am sure you are familiar with, you cite it in your letter——

Mr. **Simms**. Yes, sir.

Mr. **Taylor**. The other question is that in that case you had an Indian person living in an Indian community but he was not a member of the tribe. He had not formally become a member of the tribe.

Mr. SIMMS. Right.

Mr. TAYLOR. And it was held in that case that Federal criminal law would be applicable to him, that State criminal law was not applicable to him.

Mr. SIMMS. Yes.

Mr. TAYLOR. If we take a position that a tribe cannot exercise jurisdiction over a person such as in *Perrin*, an Indian person living in an Indian community and regarded by that community as a member of the community, if we say that State law is not applicable, but we also say tribal law is not applicable, then what do we have?

Mr. SIMMS. You may have a void. You may have a jurisdictional void.

Mr. TAYLOR. Would this bill with its definition not be attempting to fill that void?

Mr. SIMMS. Without a doubt it would. I think that in this particular situation the void, if it were left—in other words, if we were talking about the application of this bill in a State were the bill amended, which had not assumed jurisdiction over family relations matters of Indians—the only course of action would be to have Federal authorities who normally handle matters—of course, many Indian tribes have not assumed jurisdiction over family relations matters at present—are handled by Federal authorities pursuant to law or by the State if the State has assumed jurisdiction.

In this case, it would be a question of in the absence of State jurisdiction, of a parent having access to Federal authorities as opposed to the tribe.

Mr. TAYLOR. But you would concede, as between the tribe and the State, that there would be a void if we failed to deal with the *Perrin* type of situation?

Mr. SIMMS. There may well be.

Mr. TAYLOR. Thank you.

Mr. SIMMS. I am not suggesting at all that that would be a desirable thing. I think filling all these jurisdictional voids is, you know, something that everybody desires to do.

Mr. RONCALIO. Thank you very much, Mr. Simms.

Mr. SIMMS. Thank you, Mr. Chairman.

Mr. RONCALIO. We appreciate your contribution to our problem this morning.

Next is Mr. Aitken, director of social service, Minnesota Chippewa Tribe.

Mr. Aitken, would you like to have someone accompany you to the table?

[Prepared statements of Robert Aitken, with attachments, and William Caddy may be found in the appendix.]

PANEL CONSISTING OF: ROBERT AITKEN, DIRECTOR OF SOCIAL SERVICE, MINNESOTA CHIPPEWA TRIBE, ACCOMPANIED BY MR. MATSON, COUNSEL; AND WILLIAM CADDY, CASS COUNTY DEPARTMENT OF SOCIAL SERVICES, CASS COUNTY, MINN.

Mr. AITKEN. Mr. Matson could possibly answer any legal questions you may have.

Mr. RONCALIO. Mr. Matson, why do you not join us at the table. Is there a William Caddy here with you?

Mr. **Aitken**. Yes, Mr. Chairman.

Mr. **Roncalio**. You three gentleman are from Minnesota. You are welcome to read your statements if you would like, but we will enter them in the record and you may summarize if you like.

Mr. **Aitken**. Thank you, Mr. Chairman.

Rather than read the entire testimony, what I would like to do is express the support of the Minnesota Chippewa Tribe for S. 1214, because it is consistent with and reinforces Public Law 93–638, the Self-Determination Act. In my testimony I have a copy of a resolution stating that the tribal executive committee of the Minnesota Chippewa Tribe does support it. I have included a current breakdown of our social services division in the Minnesota Chippewa Tribe.

Mr. **Roncalio**. If it would be corrected with amendatory language removing the possibility of unconstitutionality along the lines you heard about from the Justice Department, would you still be in support of the bill?

Mr. **Matson**. I am confident the bill would still be supported, yes.

Mr. **Roncalio**. Thank you.

Mr. **Aitken**. I have brought along letters of support for our social services division from various countries—Itasca County, Cass County, Beltrami County, and the State of Minnesota.

Our social services division that we have for the Minnesota Chippewa Tribe is 3 years old. It started as part-time work for college students, is now one of the major divisions for the Minnesota Chippewa Tribe.

We are still young and we really have no authority within our own reservation so much as to enforce the authority that we do have. We have social workers who cannot cover some of the problems that we do have on the six reservations, but we do not have enough of them to really be effective. I feel that this bill, S. 1214, does give us the support that we need to do exactly what we need to do.

Mr. **Roncalio**. International Falls. I notice that with interest because I held hearings up there many years ago on the Rainy River problem of pollution caused by a paper company and that was more emotional than any I have ever had. That was pretty mean, way back many years ago.

You have only four volunteers in that whole area?

Mr. **Aitken**. Yes; that is a relatively new branch in our social services division we started last August. So they are working very, very hard on getting more into that area. We have to sell the judges on the idea of letting our volunteers work with the children.

Mr. **Roncalio**. You are plowing new ground with it.

Mr. **Aitken**. Right, sir.

We have within our staff 14 members and we have 100 percent Indian staff.

Mr. **Roncalio**. Very good. We will read your statement and be guided by it. I suspect we will be making some amendments to the bill, but I understand that these amendments will be acceptable to the Senate side also. We have two of their staffers here today, to be sure we are coordinating this so we do not get off in two different directions.

Mr. Matson, do you want to add anything?

Mr. **Matson**. Yes Mr. Chairman.

One, I think it is particularly encouraging to me as a lawyer to see the Congress act in this fashion. I see a lot of new miles going through the court system. What I perceive to be the major problem, and the single element that gives rise to the most criminal behavior, is really a lack of pride and lack of self-esteem. It begins from a very young age and it is fostered by the fact that the people that are making decisions over problem children, if you will, are non-Indians.

I think there is a feeling of frustration and a feeling that they are not the masters of their own destiny. With the Minnesota Chippewa Tribe's funding and staffing of social services, I see a change in that. We do use the Minnesota Chippewa Tribe services in State courts and most courts in Minnesota have allowed us to bring in tribal social service staff personnel, but this act is essential if we are to go any further.

I also just have a final comment, I guess, and that is that the Minnesota Chippewa Tribe does have a tribal court and right now it is exercising jurisdiction over a conservation code and game violations.

I think it could be easily expanded to handle social welfare problems. It would need an additional funding source obviously to do the program. You have to do it right and to do it right costs money. But I think that the Minnesota Chippewa Tribe certainly has the expertise to do it.

I guess with that I would just close by saying that we think that it is clearly in line with self-determination policy that the Congress has taken toward Indian tribes, we feel that social welfare is definitely an essential tribal relation. We feel that it is imperative for the continued viability of the Indian culture as a culture that enriches all of us, that they are able to make their own laws and be governed by them.

Mr. RONCALIO. We appreciate that statement very much. Thank you.

Let me go off the record a moment.

[Discussion off the record.]

Mr. RONCALIO. Back on the record.

Do you have something to add?

Mr. CADDY. Yes, Mr. Chairman.

I am Bill Caddy and I am a supervisor for the county department of social services, Cass County, northern Minnesota.

What I would like to do today is to describe a mutual effort between the Minnesota Chippewa Tribe and the Cass County government to provide better child welfare services for Indian families on the Leech Lake Reservation.

Minnesota is a Public Law 280 State and the legal responsibility for all social services delivered on the reservation rests with the county of residence. Now in Cass County, American Indians constitute about 10 percent of the total county population, but Indian children constitute 80 percent of the children that we now have placed in foster care. So that historically at least, an Indian child in Cass County was eight times more likely to be placed in foster care than a white child.

This has changed somewhat. This is a legacy from the past that goes back about 10 years. In addition to that, the children were usually placed in non-Indian foster homes, so they not only lost their families, they lost their cultural heritage.

We are working together now and we are trying to remedy this and I can only describe that situation as a catastrophe socially, but I think we are all becoming more enlightened about how to deal with that.

What I am trying to give you this morning is the other side of the program, the county worker's or social worker's side of it. I have heard comments from people in the social service business before that the question of capacity of the tribe to deliver social services—and that is specifically what I would like to speak to.

I am convinced that they can, they have and there is no problem. The reason I am speaking to this is we have been working together since July of 1976 when the Cass County Welfare Board agreed to fund a full-time Indian child welfare worker under supervision of the Minnesota Chippewa Tribe to be housed on the reservation and work with Indian children and their families.

As we grew to know each other and appreciate each other, we prepared an application for a grant from the National Center for Child Advocacy under the auspices of the tribe. The application was successful and the American Indian Indian foster care project started operations October 1, 1976.

The hypothesis of this application grant was that American Indian staff, operating under the supervision of tribal government and within the context of child welfare standards as adopted by the State of Minnesota, could more effectively deliver child welfare services to American Indian families.

We are now well into the second year of the project and the social service staff of the tribe has demonstrated that this hypothesis is valid in our estimation. The project has demonstrated to us at the county level that the Minnesota Chippewa Tribe has the expertise and capacity to deliver Indian welfare services in a thoroughly competent and professional manner. The project is expanded now into three other counties that lie within the Leech Lake Reservation and this project has been received with open arms by the social service staff of those counties.

A note is that none of the counties serving the Leech Lake Reservation has ever had an Indian social worker on their staff. There has never been any sensitivity training, any cultural awareness training, nothing.

The social workers in these counties have been trying to deliver social services to Indian families for years with very little success. And I am sure that I represent the feelings of all these social workers when I say that this project has demonstrated to us there is a better way to provide services to Indian families, a better way than we have been trying to do for the last 30 or 40 years.

As far as developing the capacity to deliver services to all the reservations of the tribe, I would like to say that, bearing in mind the capacity they have today has been developed in less than 3 years and that there is now a corps of experienced staff people, that the Minnesota Chippewa Tribe could develop the capacity to provide services to all six reservations in Minnesota within a short time period.

In conclusion, I would just like to say there are two fundamental points of the situation that are addressed by this act that really should no longer be ignored, that is, that Indian social workers work more effectively with Indian families; and that tribal government can effectively deliver social services within the context of the standards already adopted by the State.

Thank you.

Mr. **Roncalio**. Thank you. We are in agreement with your two conclusions.

Thank you, gentlemen, all three of you.

Are there any questions?

Mr. **Jackson**. Yes: I would like to ask some.

I am curious about the status of funding on this project that you said began in October 1975.

Mr. **Caddy**. 1976, it should have been.

Mr. **Aitken**. The statement was typed wrong.

Mr. **Jackson**. Through what period is this grant going to extend?

Mr. **Aitken**. It comes from HEW and it goes through September 1978. No future support is anticipated at this time.

Mr. **Jackson**. In the event that this legislation does not get passed and funded before that time, which is I think a good possibility, are there any contingency plans to continue funding through the county or some other source?

Mr. **Aitken**. I have quite a few plans on how to keep our social services funded. This is one of them.

I want to urge the committee also to stress a permanent type of funding situation for our social services division. It is one of the great problems that we do have, which is to know at the end of this year that the project staff that we have, the experience that we have gained, may be lost after September if our funding expires. If we are to build an effective staff and maintain the effectiveness of social services, we have to have some kind of a permanent type of funding and I hope that this would be addressed in the bill.

Mr. **Matson**. If I could just briefly address that question, the Minnesota Chippewa Tribe is comprised of six reservations and they are scattered throughout northern Minnesota and they run from Grand Portage to a town called Menominee and they are probably over 200, maybe 400, miles apart. To provide services on all of these reservations requires really a tremendous amount of money.

Grand Portage does not have a lot of resident Indians, but there are some problems there. Travel time is necessary and it really is an expensive proposition providing good services, but I am confident that money spent on child-rearing will save money later on.

You can see it in the criminal justice system and perhaps that could be avoided.

Mr. **Caddy**. As to the counties, the counties just do not have the capacity to support it. Our title XX allocation for social services is $275,000, and we are spending $750,000 right now, so—and Cass County is more supportive than some of our surrounding counties. So it is not a feasible plan.

Mr. **Aitken**. We are in a paradox. If we go to the counties, we have to tell them they have no authority on the reservations. So you are caught between a rock and a hard place.

Mr. **Jackson**. It seems that the successes you have have to do with the ability of the county and the tribe to maintain a fair level of trust and communication.

Mr. **Caddy**. Yes.

Mr. Jackson. Is that unique?

Mr. Matson. It is unique or perhaps unique with the social services departments of the counties. I think that there is maybe more cooperation with the social services than there would be with, for example, the juvenile probation officers or the court itself or perhaps the sheriff's department.

Mr. Jackson. Thank you.

Mr. Roncalio. Thank you again, gentleman.

Ms. Foster. A number of times the issue of confidentiality has been raised, that mothers will not wish the tribe to know of the placement. Is this something that you have run across in your situation? Is this a vital concern or is it a minimal concern?

Mr. Aitken. It has been a concern that cropped up from time to time, but we have handled it in the same situations as the county does or that the people wish to be respected—well, respect their wishes.

Mrs. Foster. The other question is, you operate now on the demonstration grant?

Mr. Aitken. Yes.

Mrs. Foster. If that funding runs out and this bill does not pass on time, will you benefit from that grant program? What other source of funding do you have?

Mr. Aitken. One situation was to go to the county and ask them to fund some of the workers. We are funded really from three sources: One is contracted from the Bureau of Indian Affairs for a small amount of money, and the other is a research and demonstration grant from HEW; and the third is what we call the Law Enforcement Assistance Act through the State of Minnesota. That is a crime prevention program.

Mr. Roncalio. LEAA funds, yes.

Mr. Aitken. Right. But in answer to the question at this time, I really do not know which way we can go. I am hopefully going to do some good selling job to HEW that we are funded for next year. I think it is a valuable experience that we would lose if we did not have it.

Mr. Matson. Mr. Chairman, I wonder if I could make a short response to a statement that I believe the gentleman from the Justice Department made.

Mr. Roncalio. Yes.

Mr. Matson. That is the cutback in jurisdiction. We find it very common in Minnesota that has more than one Indian tribe, particularly the Red Lake Indian Reservation, which is not a member reservation of the Minnesota Chippewa Tribe.

Mr. Roncalio. What is it?

Mr. Matson. It is its own tribe, the Red Lake Bands, Pembina.

Mr. Roncalio. Canadians originally?

Mr. Matson. There were perhaps some that came from Canada.

Mr. Roncalio. Basically United States?

Mr. Matson. Yes; residents of the United States.

Mr. Roncalio. They have their own sovereignty and all?

Mr. Matson. That is correct. I believe when Public Law 280 was passed, Red Lake was excepted out of the Indian country that the jurisdiction was passed for. At any rate, there are many enrollees at Redlake that reside within the bounds of the reservations, posing the

Minnesota Chippewa Tribe, and I think that many of these families would view themselves as Leech Lakers, for example, or White Earthers or Fond du Lacers, this type of thing, and I think that their main identity is as Indians and perhaps as Chippewas, and therefore I think it makes sense that if there is a tribal court system set up, the jurisdiction passes to the court over the children as well as whose parents happen to be enrolled in that particular reservation.

Also as far as restricting it to children within the reservation, I do not think this is what the Justice Department recommended, but as is the case with many reservations across the country, the larger cities are oftentimes just off the reservation. For example, in Minnesota we have the Leech Lake Reservation and we have Bemidji, which is just to the west of it, and we have Grand Rapids just to the east of it. A lot of times we have Indian families that are very much affiliated with the reservation, but for some reason, and oftentimes when the children are very young, the mother and father will be living just off the reservation.

Mr. Roncalio. That is a good point.

Mr. Aitken. Could I comment on Mrs. Foster's question, on confidentiality?

Were you directing it at adoption more so than anything else?

Ms. Foster. Yes; the confidentiality usually comes into play in a case of an unwed mother who does not want the parents or the tribe to know.

Mr. Aitken. It is a unique situation for adoption of Indian children, because Indian children have certain educational rights and educational benefits that they can have, but in order to gain these benefits, they must be enrolled members of the tribe.

Mr. Roncalio. That is right.

Mr. Aitken. So what we have done is we can release the information to that child, what their blood quantum is, what tribe he is enrolled in without giving the name of the parents.

Mr. Roncalio. You have no State statutes that prohibit that now? Wyoming used to have these statutes that were in conflict with that, but you do not have them?

Mr. Aitken. No, sir, but we have adoption policies and procedures within our own office that we have adopted.

Mr. Roncalio. Gentlemen, I think this has been very, very good.

Mr. Clausen from California has just joined us. I want to go to the next panel, if we may.

Mr. Clausen. Yes; thank you very much.

I am sorry I was not able to be here. I am quite interested in the thrust of what we are discussing and particularly as it relates to the preamble of the legislation here. I will have a chance to visit with you, Teno, and staff will brief me on this.

Mr. Roncalio. Thank you again, gentlemen. We appreciate it very, very much.

Mr. Wilford Gurneau, director, Native American Family and Children Services: Patricia Bellanger—any relation to Enrico Berlinguer, the Secretary General of the Communist Party? He is giving my people a lot of trouble these days. Also we have Beryl Bloom, director, United Indian Group House, Minneapolis.

You can read your statements if you want to, or we can put them in the record and you can comment, however you wish. If it is short, you can read it, fine.

Let us take the entire study message and enter it into the committee's files of today's hearing record.

PANEL CONSISTING OF: PATRICIA BELLANGER, FIELD DIRECTOR, AH-BE-NO-GEE CENTER FOR URBAN AND REGIONAL AFFAIRS, UNIVERSITY OF MINNESOTA; BERYL BLOOM, DIRECTOR, UNITED INDIAN GROUP HOUSE, MINNEAPOLIS, MINN.; AND WILFORD GURNEAU, DIRECTOR, NATIVE AMERICAN FAMILY AND CHILDREN SERVICES, MINNEAPOLIS, MINN.

Ms. BELLANGER. Mr. Chairman, rather than reading our study, we would like to kind of explain. First of all, this colloquium we held consisted of a group of about 100 native American professionals in the field of child abuse and neglect. These showed findings of these workers which indicated the integrity of the Indian family clearly. It also showed that the use of the extended family as a portion of the treatment was something that all of the different professionals there used.

Some of the people that attended our hearing are in the room and will be testifying.

Also, it showed clearly that using treatment techniques that were modified for Indian clients worked better; also Indian people working with Indian people. This is how the study came out all the way through.

One of the things that it pointed out was a jurisdictional question: That Indian people should have the right to control their own lives, this Self-Determination Act. We fully support the Minnesota Chippewa Tribe's stand. We feel that is clearly one of our rights.

I am from Cass County. I remember quite well the way the county was before the coordination between the tribe and the county. I left instead of staying there. [Laughter.]

But we also have to understand that in an urban area such as Minneapolis, perhaps half of the Indian people there are Ojibwa. We have Sioux, Winnebago people, Choctaws, every tribe that you can think of. And in an urban setting like this we have the United Indian Group House, of which Beryl Bloom is the director. I am the field director up in the northeastern area, Wilford Gurneau is director of the Native American Family Services. We work with all sorts of children, but we also have the need now.

Right now the State has clear jurisdiction over our children; and the rate of our children being removed from the home is very, very high in Minnesota. We would like to see the jurisdiction somehow, even in a working relationship such as Cass County and the tribe, but we would rather work in a relationship with the tribe itself in the jurisdictional setting somehow, possibly that we have an advisory committee set up in an urban area that would include members that are already working in the field.

Working in child abuse and neglect and working in social service agencies, perhaps a council might be set up. Indian people always work better in councils. We talk together, think together and come out with conclusions that make sense to us. And that this council should be in charge of licensing foster homes, assisting case planning for families, and in need of foster care or whatever, assisting in placing these children themselves.

There is a demonstration project through the national child abuse and neglect project called Ku Nak We Sha' out in Oregon, Toppenish, that has sort of that thing going. I went to see that program and was very impressed with the working relationship that I saw between the county and the Indian people, the police and Indian people. The police were bringing the children in there instead of taking them to the emergency shelter home for the county.

We saw that the placements were better for the children. They did not stay in placement long. If the workers saw that the family was out partying or something, the workers would go grab that family and bring them back and say, "Hey, you got kids," and it was a better relationship that I saw that could work for us.

Mr. CLAUSEN. Where was that?

Ms. BELLANGER. Ku Nak We Sha' in Toppenish, Oreg.

Mr. CLAUSEN. In Oregon?

Ms. BELLANGER. Yes. It is part of the—it is a demonstration project. It is an emergency shelter home basis. The Yakima Tribe has that thing, but I think it is a Public Law 280 State also. They work hand in hand with the State. I think it really works well.

I think this planning agency or council would provide liaison between Indian community and State and local agencies for changing local policies to better reflect Indian relationships, Indian/non-Indian relationships.

As an example of that, I am not going to—we don't have it reflect in the statement, but we have done things such as help legislate on the State level the urban Indians' problems and everything to try and change that. This council would have a better chance at looking at these things and better chance to help us work together.

Also, there is another problem that we see that we would like to address, that all of the money coming into the State to the local level, the county government, clearly marked for Indian use, for welfare, be identified and addressed through the advisory councils such as title IV of the Indian Education Act. They have advisory councils on the local level, State level and national level that show how that money should be channeled.

We have seen that that has helped Indian children go to school. We have seen the parents begin to interact with the school. Different things are happening. We can see that happening also if the money, for instance, $478,000 is coming into the State of Minnesota for indigent Indian accounts. It goes directly to the State and here we are and then into the county welfare and they are placing our children.

Ms. BLOOM. On February 1 of this year in Hennepin County they received approximately $525,000 from the State, of indigent State moneys, and they had 190 children in placement. They were servicing 190 children in Hennepin County with these moneys. 150 of these children were in foster homes, not identified as Indian foster homes, but foster care facilities, and 40 of these were in what we call rules 5 and 8 in the State of Minnesota, residential treatment centers.

We run a program that can accommodate 30 youths and we have a service with this county and at this time we are full to capacity, but we are being utilized by Hennepin County, only 10 of our residents are placements from Hennepin County.

So it clearly states there is a prejudice on the part of the local level government that they are not utilizing the Indian community services that are available even though we meet the criteria by the State, because we are a State-licensed facility.

You know, it is—another area of our concern from the group home standpoint is that we also need shelter for younger children as Pat was saying, and in 1976 in Hennepin County there were 425 children in this age group taken out of the home and placed in shelter homes for anywhere from 2 days to 7 days and maybe 5 or 6 days the family was not notified where their children were.

And the percentage was that there was 22.6 percent of these kids—we don't even comprise populationwise 1.7 percent in Hennepin County—so it is very clearly demonstrated by these statistics that there is a need for Indian jurisdictional rights, the advisory council that Pat is talking about, and we are competent to handle our own affairs.

Mr. **Gurneau**. Thank you, Mr. Chairman.

I am Wilford Gurneau, I am from Minnesota. I live in Minneapolis, but was born and raised on the Red Lake Indian Reservation. Our agency. Native American Family and Children Services, is dealing with crisis situations in that we interview in behalf of families that are going to court or termination hearings and we are in the field of reuniting families.

We are also in full support of the resolution spoken to by Mr. Bob Aitken and the panel before us. We know well that they are short-staffed and they cannot cover the reservations that they are to cover. Now we have two cases from Minneapolis going up north that are in the delegation now.

But to get down to what I am saying is, I would like to rather than elaborate or read my testimony, I would like to put my views on that.

Over the years, since 1972 until December of 1977, our agency was successful in reuniting 211 children back with their natural parents. These cases involved where there were termination rights by the courts in custody hearings and negotiations with counties and returning the children back to their families.

May I add, I think that a professional person should be left alone to do this. I negate that. I think that a person that involves himself with child welfare can learn these practices and put them well to use, as we have demonstrated. We were not professionals, but we were successful in returning 211 children back to their natural parents. I would consider myself a paraprofessional.

The real case is that the children were returned to their natural parents. We found that about 80 percent of the casework involved there was no delivery of services whatsoever. This prompted the worker who was involved with these families to do an about-face and work to get the children back because they did not follow the rules and regulations as mandated by the State regulations in that we remind the workers in each county that they are there for the specific reason to keep families together and not to break them up.

At the beginning of their casework they have failed to do this. This is why we were successful in returning these children. A lot of these cases, some of the cases we do not hear of and it is too late, is that we knew what was going on. There was no followup or there was no following of rules and regulations by the States. The social service practice was sloppy and we have asked help from the State department of public welfare to intercede in our behalf and the families' behalf, which they have not done. They will not help us with this.

We knew what was happening in the State. No help came from anyone. We had only one recourse left open to us. That was to call in the Health, Education, and Welfare Civil Rights Department, Health and Social Services Division. We showed there was discrimination against native Americans in Minnesota.

Mr. CLAUSEN. Against what?

Mr. GURNEAU. There was discrimination involved in services in regard to foster parent adoption of children in the State of Minnesota. So Health and Education Region 5 of HEW Civil Rights Division came to Minnesota and did their study, their investigation, and found the State of Minnesota in noncompliance with the Civil Rights Act of 1964 in regard to foster parent adoption. That has been 11 months ago and to this day the State department of public welfare has done nothing to remedy these matters even with the threat that they may lose their Federal funding in foster care and adoption.

Also, if I may get back to the funding part of it, we have been operational since 1972. We have not had any large grants from HEW or any large foundations in the State of Minnesota or elsewhere even though we have disseminated proposals time and again. We were in a catch-22 situation. We are not from the reservation, we are not professional people, we cannot be licensed because we don't have any money, but we did struggle along piecemeal, church groups, perhaps $5,000 or $6,000 here and there to keep us going.

It was a year and a half, almost 2 years, that I worked by myself without pay to keep this program going, spending $6,000 of my own money, which I could not afford, during that interim. I got so far behind on my bills and I have a bill of sale—I had to sell my house to satisfy my bills.

I showed the lady this. This is what is going on in Minnesota. We know it is happening, it is wrong, but somebody has to do the work. We are all dedicated people to our children, and this is why I say that we in the urban areas need help in the way of funds.

Mr. RONCALIO. We understand that is a very serious and tragic review of the facts in Minnesota. We hope we can do something to correct it.

Mr. GURNEAU. Also, Mr. Chairman, what I say is backed up in my testimony, that from HEW to the State of Minnesota and other plans——

Mr. RONCALIO. We will have this admitted into the record.

Thank you. We thank you very much.

Are there questions?

Mr. CLAUSEN. Yes; Mr. Chairman.

I am intrigued by your testimony, and please accept my sincerity when I say that you shouldn't apologize for not quite being a professional, because we have so many professionals that are so professional that they lose sight of what the problems really are. You indicated there were some churches working with you.

Mr. **Gurneau**. Yes.

Mr. **Clausen**. When I read all of this and I can only go back to some of the things I observed out in my own congressional district, there are church organizations and there are church organizations, some that are very effective in their own programs and dealing with their own people. I just made a note here: You made reference to the idea of working with the tribe. That is precisely what I do in my own area. I try to work with them and their council. I have an area where we have tried to integrate most of the community activities outside of the tribe working with and in the tribal council, and we have had a tremendous amount of success in integrating all the programs into the kind of thing that would be beneficial to Indians and non-Indians alike.

Going back to the church organizations again, have you talked to some of the Mormon Churches because they have a tremendous family program? It is just a matter of people knowing how to proceed, how to set these things up and develop their own funding. I have seen this occur with Seventh Day Adventists in our area. They have their own welfare program. There is no Government money, but they really take care of themselves and this is what I read you saying. You would like to work with that direction.

Have you had a chance to visit with any of them to get a clear-cut understanding and a philosophy of how they handle the revitalization of the family unit, how they hold together, and the families are nothing more than a group of people that go to make up a community? Have you had a chance to visit with them?

Ms. **Bellanger**. No; I haven't, sir. We talked about the integrity of the family, you know, just talking amongst ourselves and amongst the tribes and everything. I think that native American people really have a much better understanding than most non-Indian people of family.

When we talk about family and extended family, we mean more than parents and grandparents and everything.

Mr. **Clausen**. Oh, yes.

Ms. **Bellanger**. I think you are right. I observed the Mormon Church. I have never really talked to anyone there.

Mr. **Clausen**. The only reason I say that is that clearly, whatever you would learn from them, you would want to have it adapted to your own objectives, your own "goals of self-determination" and that sort of thing. I only suggest that I have seen a proven situation in any number of cases and it is reflected in my mail, Teno. They do not come asking us for help. All they want to do is be in a position where they can help themselves.

So I think in many cases we get hung up on the fact we have to have money to accomplish these things when, in fact, if you can learn how others are doing it, it might be tremendously beneficial. I think that the very fact that we have set up, if you remember, Teno, one of the revenue-sharing programs, we made it possible for Indian tribes to qualify for revenue-sharing.

One of the reasons I supported it was it permitted them to do their own thing and be treated just like any other political subdivision of our Federal system of government. They administer their own affairs, so that concept and that principle would permit the people in the given area to address the problems and all the variables and set the priorities.

You made reference to your ability to work on a demonstration project, the county, the police, the Indian people, for the placement of children. This is the kind of thing we are talking about. I think so many times we have so many categories of programs, Teno. If we could bring all these categories together into a consolidation of some of these funds and get them up in there in a fair allocation formula, you would not have to come to Washington.

Ms. Bellanger. I agree with that.

Ms. Bloom. Identifying the moneys coming into the State available for Indian services, you know, if the moneys come——

Mr. Clausen. You want to control everything. We just want to help people, not control everything.

Mr. Roncalio. With respect to your reference to the Toppenish, Wash., program, I am glad to hear the reference to Maxine Robbins. Do you work with her out there?

Ms. Bellanger. Yes.

Mr. Roncalio. How do you pronounce the program, Ms. Bellanger?

Ms. Bellanger. Ku Nak We Sha'.

Mr. Roncalio. Thank you very, very much. You made an excellent and helpful contribution to our work. I see your Congressman, Don Fraser, has come in. We will call him now.

We are glad to see you, Don. You can read your statement or proceed in whatever way pleases you.

[Prepared statement of Hon. Donald M. Fraser may be found in the appendix.]

STATEMENT OF HON. DONALD M. FRASER, A U.S. REPRESENTATIVE FROM THE STATE OF MINNESOTA

Mr. Fraser. I think it would be well for me to put my statement in the record and speak informally a few moments.

Mr. Roncalio. Fine. We will enter it in the appendix.

Let me first ask the students to come in and sit up here if you want to. Grab a chair somewhere so you do not have to stand up.

Mr. Fraser. I am here to support the action by the subcommittee on the Indian Child Welfare Act. I understand the administration has not yet decided to offer its full support, but I hope enlightenment will come their way.

Mr. Roncalio. I hope so, too. This administration is just acquiescing in 192 Federal employees being transferred from IRS and I do not know what this administration is trying to do to incumbent Democrats, but I got news for them. Every time I turn around, they are just not getting with it, if I may say so on the record.

Mr. Fraser. That is right.

Mr. Roncalio. And this is another case we have here.

Mr. Fraser. Let me just comment on two sections of the Indian Child Welfare Act. Those are sections 101(e) and 102(c) and (d). Let me say, first, we have a large urban Indian population in our city, one of the larger populations in the United States in proportion to our overall population. We estimate that the native American population is about 4 percent of the population of our city.

Under sections 101(e) and 102 (c) and (d) before transfer of the Indian youth, the local agency would have to notify the member as well as the tribe with which the youth has significant contact. Although this appears to be an insignificant burden, we are told by people who are familiar with this that this is not likely to work well in an urban setting. So we would like to ask the subcommittee to consider amending the act to include a provision for designation by the Secretary of a suitable Indian organization in an urban area which has a large Indian population, which could serve as a quasi-representative of the tribe for notification purposes.

Mr. **Roncalio.** Let us stop there. Does that sit well? I am trying to coordinate with the Senate. Does that sit all right?

Mr. **Taylor.** It would be new, but I think that it is an intriguing idea.

Mr. **Roncalio.** Why do we not entertain it?

Ms. **Marks.** We have had objections to that provision by the National Congress of American Indians. However, I think that the provision has never been developed where they could actually take an adequate look at it.

Mr. **Roncalio.** Why do we not try it?

Ms. **Marks.** Their immediate concerns have been whether the tribes agree that, in fact, it is the tribe who has the relationship to the child. Therefore, they feel that if some arrangement could be worked out possibly with the urban organizations where they would also be notified as well as the tribe, something like that might be much more acceptable.

Mr. **Roncalio.** That is all right, sure.

Mr. **Fraser.** I think the fear is it will not function, so this will provide an alternative means of notification.

Ms. **Marks.** Right.

Mr. **Fraser.** Now, section 202(a) would allow the Secretary to establish Indian development programs off the reservation. This could be very helpful to those of us in the urban setting. Our fear is the BIA is too much reservation oriented.

Mr. **Roncalio.** It is out West, no question about that.

Mr. **Fraser.** So the subcommittee might mandate the establishment of programs at a rate commensurate with a need in the area. In other words, stronger language so the BIA would know the Congress intended they deal with the urban problem, as well as the reservation problem.

Those are the two main suggestions that I wanted to offer to the subcommittee.

Mr. **Roncalio.** Maybe we can do it this way. One of them will be in the statute and one in the report to see that they get attention.

Mr. **Taylor.** Mr. Fraser, I have one question particularly related to Minneapolis. As this bill is presently drawn, it is designed to service people who are members or eligible for membership in a federally recognized tribe?

Mr. **Fraser.** Yes.

Mr. **Taylor.** That eliminates Indian people who are members of tribes not federally recognized, or people who are members of tribes with whom the Federal relationship has been terminated with. I wonder what percentage of the Indian population in Minneapolis would fall into that category, if you would know. If not, perhaps Mr. Gurneau could help.

Mr. **Fraser.** Yes; it exceeds my information.

Mr. **Gurneau.** I do not have the exact figure on that.

Mr. **Taylor.** We have received testimony on this problem and it could be a problem in Minneapolis, which is why I asked the question. We will have other testimony later today.

Mr. **Fraser.** It may be that we can find out. We just do not know at this point.

Mr. **Roncalio.** Thank you very much. We appreciate your help. We are hoping to work this out in legislation that will be identical with the Senate-passed version or something they will accept if we change it, so we do not have to go to conference and we can get a bill signed.

Mr. **Fraser.** I am all for that.

Mr. **Clausen.** Thanks. We will stay in touch with you.

Mr. **Roncalio.** We have two votes. I suspect if we are going back to Humphrey-Hawkins, that is a vote to approve the journal.

We will go on with the hearing; we will not bother with the floor activity. That is the second bell. You have 10 more minutes.

The next witness is Omie Brown, director, Urban Indian Child Resource Center, Oakland, Calif.

[Combined prepared statement of Omie Brown and Jacquelyne Arrowsmith may be found in the appendix.]

PANEL FROM THE URBAN INDIAN CHILD RESOURCE CENTER CONSISTING OF: OMIE BROWN, DIRECTOR; AND C. JACQUELYNE ARROWSMITH, BOARD MEMBER

Mr. **Roncalio.** This is the Oakland demonstration project and we are anxious to hear what you have to say; we appreciate your coming. You go right ahead.

Ms. **Arrowsmith.** I am Jacquelyne Arrowsmith and I am a board member for the center. I am going to read this since this whole procedure is new to me. I will make side comments from the statement.

Ms. **Brown.** I would like to make comments after she has finished.

Mr. **Roncalio.** OK.

Ms. **Arrowsmith.** The Urban Child Resource Center and Indian Nurses of California, Inc., based on experience in the field of child welfare, strongly support S. 1214. However, in its present working form, it excludes thousands of deserving and eligible American Indians, specifically those Indians who are members of federally terminated tribes. By rewriting the definition of Indian in section 4, paragraph (b), this possible oversight would be rectified.

The Urban Indian Child Resource Center was founded 3 years ago by Indian Nurses of California, Inc. The center was the first urban Indian project funded through the National Institute of Child Abuse and Neglect in 1975. The center's main objective is to help Indian children who become innocent victims of parental neglect and/or abuse.

Before the establishment of the resource center, most of the Indian children identified as being neglected were immediately taken up by the county court or welfare system and placed in non-Indian foster homes. As a result, Indian children end up in homes of a foreign culture with very little chance of ever returning to their rightful parents.

The center is located in the San Francisco Bay area and serves a population of 45,000 native American Indians. Eighty percent of the Indians are mobile and often return to their homeland. With this fact in mind, the center provides a linkage between urban and reservation living. Aid is given to the Indian families in a broad array of services ranging from the availability of emergency food and clothing to identifying Indian homes to be licensed as foster homes.

The center has served 215 families which becomes approximately 1,500 clients when each family member is counted individually.

Ms. **Brown.** There are Indian children placed out of Indian homes. At the time we started the Urban Indian Child Resource Center, there was only one Indian home licensed through Alameda County. We now have 7 and potentially licensing at least 10 more within the next 15 months or so.

Mr. **Roncalio.** Is Alameda County directly south of Richmond?

Ms. **Brown.** Yes.

Mr. **Roncalio.** Between Richmond and San Leandro?

Ms. **Brown.** I think it is west and south—south, yes, between them.

Ms. **Arrowsmith.** Also, of this number of clients received, they represent 39 different tribes, many of whom are California residents. There are at least 500 persons they receive with family friends, and they are from the community. This number increases as the resource becomes more established in the community.

The staff is unique in that all are Indians except our bookkeeper, and they number 17 and they come from 11 different tribes.

Ms. **Brown.** Of those staff members, I guess we only have one with a masters degree, the rest have associates of arts or are not degreed, but they do have the sensitivity to the Indian community which we do not find in the county social services agencies.

Ms. **Arrowsmith.** Many of them are continuing on with their schooling on their own time. The board members exist of professional Indians, seven of us are registered nurses and there is a teacher from the community; they are all on board. They represent, I think it is eight different tribes. The Indian Nurses of California, Inc., is a nonprofit organization established in 1972. The nurses represent 35 tribes and reside throughout the State of California. The Indian Nurses of California Executive Council acts as the board of directors for the Urban Indian Child Resource Center and meets quarterly to monitor the center's activities.

Our recommendations are that S. 1214 needs to be strengthened but has to become law as it is essential to reduce external placement of Indian children and increase the capacity of young Indian families to understand child development and utilize community resources.

We respectfully suggest that the definition of "Indian" be changed to read as follows:

"Indian" or "Indians," unless otherwise designated, means any individual who (1), irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendent, in the first or second degree, of any such member or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is determined to be an Indian under regulations promulgated by the Secretary.

We recommend that Indians rally to support this bill, S. 1214.

Mr. Roncalio. Would you put a Hawaiian native in there, too, since you are in California, and we have quite a few from Hawaii?

Ms. Arrowsmith. Usually Hawaiians do not consider themselves in this area.

Mr. Roncalio. They are looking around now for some friends and I know that to be a fact. I just wondered about that, do we need that sort of definition in the bill.

Ms. Brown. What we are experiencing is where you have an agency or group of people, Indian children fall into the cracks and no one else does anything about them. The reservation Indians don't recognize us and especially in cases where a good percentage of our population are our clients, our customers, are or have been relocated by Bureau of Indian Affairs.

Now they are considered terminated; they are no longer considered Indians now that they are relocated to the urban areas in that there needs to be a definition. Also, the California Indians who are experiencing very much the same problems.

Mr. Roncalio. Problems would arise because of problems for funding purposes, also that definition for establishing blood quantum for distribution of funds which has been left the criterion of the tribe. The tribe can say who is an Indian, not us, not the Congress. We have pretty much left that to the tribes over the decades.

We will try to redress that problem in the report language so that at least we know that the problem is there and maybe we can do something there.

Ms. Arrowsmith. This definition was taken in part from Public Law 94–43.

Mr. Roncalio. But you broaden it just a little to include the urban?

Ms. Arrowsmith. No; we have let out some of it.

Mr. Roncalio. That is good to know. Maybe we can carry on.

Mr. Taylor. That is the Indian Health Care Improvement Act, Mr. Roncalio.

Ms. Brown. That would be more applicable to the non-federally recognized tribes, as well as the urban Indian population.

Mr. Roncalio. And those who have been terminated since the act. We think you have made a good statement. Thank you very, very much.

Ms. Brown. I want to add, Mr. Chairman, that by not including the—by limiting it to the federally recognized tribes, it makes it very difficult to carry out services for urban Indians and people that are not recognized by the Federal Government, and that represents, as you know, there are approximately 1 million Indians in the Nation today and there are 500,000 of them that live in urban areas; and of those according to statistics, the age tends to be lower. I know that in our own caseload, that we, and our parents, are much younger than the national average.

Mr. **Jackson.** I was curious what percentage of your caseload would fall into the category of people from nonrecognized tribes?

Ms. **Brown.** What percentage?

Mr. **Jackson.** Roughly.

Ms. **Brown.** If you are talking about—if you are specifically talking about enrolled members of our clients, I would say half of them are enrolled, half of them are not.

Mr. **Jackson.** Thank you.

Ms. **Brown.** And if you are talking about California Indians, we really don't have enrollment per se; they have different criteria and that creates something else. The rest of the population are enrolled on reservations, but they often do not get the services that are extended to the reservation Indians and what we are saying is that there is—that we recognize that reservation Indians have to have the services that they are receiving; Lord knows if they don't get enough of it. But equally as important, that urban Indians are experiencing the same thing. When we went for funds to the county for title 20, we were told that we were No. 351 down the list. To compete for that on a small scale of numbers becomes very difficult.

Mr. **Jackson.** Is the National Institute for Child Abuse and Neglect the sole source of your funding?

Ms. **Brown.** At this point, we have a full foster home recruitment from title 20, but this is the last year of our funds. We know, according to the Office of Child Development reports on Indian state of the arts, that all of the urban child welfare programs operated by Indians are having financial problems and most of them have to close because they cannot relocate or cannot locate funds.

Mr. **Taylor.** What is your operating budget for the past year?

Ms. **Brown.** We have a $250,000 operating budget which includes a small research project of $48,000 at this time and this is again, I say, our last year of our demonstration funds, and it is much more difficult to find funds for an urban Indian project, especially in the area of child welfare.

Mr. **Roncalio.** Let me go off the record here.

[Discussion off the record.]

Mr. **Roncalio.** OK; back on the record again.

Thank you both for your statement. We appreciate your coming to help us with our work.

Dorothy Buzawa, supervisor of operations, ARENA Project, accompanied by Mary Jane Fales.

[Combined prepared statement of Mary Jane Fales and Dorothy Buzawa may be found in the appendix.]

PANEL FROM THE ARENA PROJECT CONSISTING OF: DOROTHY BUZAWA, SUPERVISOR OF THE EXCHANGE; AND MARY JANE FALES, DIRECTOR

Mr. **Roncalio.** You may read your statement verbatim if you like or you can just comment, and we will put it in the record.

Ms. **Buzawa.** Good morning; we are very glad to be here. This is Mary Jane Fales, director of the ARENA project; I am Dorothy Buzawa, supervisor of the Exchange and head of the Indian adoption project. We are part of the North American Center on Adoption which is a division of the Child Welfare League of America. The North American Center is concerned in breaking down all the barriers that prevent children from being placed in a permanent home in the United States.

ARENA goes back 10 years to 1967 and during these 10 years we have placed over 2,000, helped to place over 2,000 children. As a precursor of this, the Indian adoption project started in 1957 and during this 20 years, we have helped place about 800 Indian children. We have also been concerned with placing them in race where possible and we have become increasingly successful in facilitating these placements in the last several years. We have also become very active in helping States and recruitment groups to learn how to more effectively find Indian homes for their children.

We have also had the privilege of working with Indian advocate groups such as the Association of American Indian Affairs and the National Congress of American Indians. We are very pleased to see that they have been pushing for legislation to help children so that so many are not removed from their families.

We would like to, today, support title 2 of the bill, particularly the family development program because we think it would be really helpful in helping Indian families and, along with that, titles 3 and 4. However, we have very serious questions about the first title.

Ms. FALES. You will have to excuse me, this is the first time I have testified, and I am not going to be making a very popular statement around here which is not to support title 1. We very strongly believe in the need for keeping children in their biological families whenever possible and when that is not possible, we really very strongly can see that children need to remain in a culture that is similar to the one that they have. And we believe that the bill, the heart of the bill is in the right place, but some of the provisions in there we feel may instead of helping children, may instead cause, some problems. We have some real serious concerns about the way in which that may affect many of the youngsters particularly those youngsters who are not living on the reservations.

I see that now we have close to 1,000 youngsters who are legally free for adoption registered with us from all over North America, Canada, and the United States and a small, but significant percentage of those youngsters have some portion of their culture Indian related. Most of the youngsters do not and have not lived on a reservation. Many of those youngsters are not infants, we are talking about older children and we are very concerned that many of these children under that law, title 1, would be prevented from having a permanent home instead of helped to having one.

I feel that we see many children lingering in foster care all over the country, black, Chicano, Puerto Rican, and white and we hope to knock down these barriers, not build them up. We are happy to hear, and one of the major questions we had, was the constitutional question which seemed to have been addressed by a number of groups and we are pleased to see the waiver clause may be put in and that sounds like that might handle many of the questions we had there.

But I think we get to real questions of jurisdiction and how that would be handled and those questions that really may affect many of those youngsters not living on the reservation. For example, the

Ms. **Marks.** Yes.

Ms. **Buzawa.** So that the child can get back to its own family if that family has been rehabilitated and is able to take the child, that would be fantastic. If need be, the child is free then to go into adoption, too. But this accountability system would be really very good.

I know in other pending legislation, H.R. 7200 or S. 1928, that this is being considered, too.

Mr. **Roncalio.** OK, ladies.

Ms. **Foster.** I have a question, Mr. Chairman.

Ms. Fales, you said that you had about 1,000 children presently on a list of children who are available for adoption?

Ms. **Fales.** These are children from all over North America.

Ms. **Foster.** Nationwide at the present time.

Ms. **Fales.** Canada and the United States.

Ms. **Foster.** And a percentage of those were Indian?

Ms. **Fales.** A small percentage at this point are Indian youngsters.

Ms. **Foster.** Do you know how many that would be?

Ms. **Buzawa.** Around 20 or 25.

Ms. **Foster.** The percentage?

Ms. **Buzawa.** No, the number.

Ms. **Foster.** Do you have any knowledge of—let me ask you the other way. How do these children come to this list? Is this voluntary or involuntary consent?

Ms. **Fales.** You are talking about two things. The referral to our organization was voluntary on the part of the agencies who are looking for an adoptive home for these youngsters. These are all children whose legal rights have been terminated previously. But as far as whether I would say that probably better than 50 percent of these youngsters have had involuntary termination of parental rights and the other half may have had voluntary termination where the parents have given their permission. So it differs according to each case.

Ms. **Foster.** In the case where the original action which led to the child being placed for adoption was involuntary, don't you feel in that situation that a tribe should have a right to come in and act as an additional protective source for the children?

Ms. **Fales.** Well, in for example those 50 percent of youngsters where it has been involuntary?

Ms. **Foster.** Yes.

Ms. **Fales.** The recruitment of Indian homes on the part of the agency might be without identifying perhaps the privacy of the biological parent, should definitely be considered.

Ms. **Foster.** But in involuntary consent you have a privacy concern; but where a child is being placed involuntarily through a court proceeding, don't you think in that situation——

Ms. **Fales.** As long as there are not time delays. That is one of the concerns we have, that many of the youngsters get caught up in the systems of finding homes which end up with the youngster growing old while the courts are trying to make some determination for them. And transferring all the jurisdictions.

Ms. **Foster.** In the case of adoption, is not the time in which somebody can withdraw consent in most State courts 90 days or longer?

Ms. **Buzawa.** It varies; 30, 60, or 90.

150

Ms. Foster. Are you distinguishing between withdrawing consent and having to revoke the consent through proceedings? Up to 10 days, you can withdraw consent. There is no proceeding under this legislation; you can withdraw consent. After 10 days and up to 90 days, there is a different system, you have to come in and offer proof.

Ms. Marks. That is in the staff draft. If we can possibly clarify for you, it would help. There has been a discussion and a lot of discussion by staff about the consent withdrawal provision and possibly amendments. Suggestions have been made that up until the final decree is an extensive period of time and probably should be limited somewhat.

Mr. Taylor's suggestion was something to the effect of giving a limited period of time where a consent could simply be withdrawn and then, after that particular point in time, still allowing for a petition of withdrawal but making it an involuntary situation where there was a court proceeding to determine where the withdrawal was needed. It would be a case where the best interests of the child could be considered by a neutral force at this point in time.

I realize that the problems of time constraints are there, but my feeling has been after reading a lot of testimony and talking to a number of people that there is a two-fold situation here. There is a need to provide a child with a home, a good home as quickly as possible, but there is also a need to make sure that that home is really the answer to that child's problems.

I have seen cases where it is my true honest opinion that there has just been too much rushing. There has been a push, push, push, push and all factors have not been adequately considered. And problems have resulted 4 and 5 years later as a result of pushing too fast and having a family which is not prepared to handle some of the situations that they are going to be faced with in the future. This is another side which I feel equally strong about.

Ms. Fales. I think that you are right in saying that often parents are not adequately prepared; you are right in saying that perhaps not all placements work out.

On the other hand, I do think that as overall studies have shown us that in terms of psychological adjustment of adult adoptees as opposed to those who languished in foster care that the younger and sooner a child is placed in a permanent setting the better chances they have as adults in making psychological adjustments.

And that is if they can't be in their biological family. I also tremendously agree with the statement of this particular bill is addressing that many of these youngsters really could remain in their biological homes if adequate work was given to those parents.

Ms. Marks. The other point I would like to address, if I may, is in terms of the actual preference standards. I think that you are discussing, at least over the phone we were discussing, the problem of handicapped kids.

Ms. Fales. Yes.

Ms. Marks. At this point, it is my opinion that the bill would not prevent the placement of a child in a non-Indian home if circumstances warranted. What it does is to provide a statement, you shall give preference to in absence of—then the big quotes "good cause to the psychological parent has been, I think, used in courts all over the country to perceive that many youngsters can develop psychological parents. Many of the youngsters not on reservations are in foster homes where they built up psychological ties. They may be Indian, but not of the same tribe. Those foster parents may have one foster parent who is not eligible for a tribal membership, but be Indian, or they may be non-Indian. Many of the youngsters we are talking about have significant amounts of other heritages, like this year we placed some black Indian youngsters in a black home.

There, I think, that they will be more comfortable. Their identity problems will be less in the black culture than they will be in the Indian culture as an example of some of these youngsters.

We are concerned about what determines significant contact with an Indian tribe. That is in there because many of the youngsters we are talking about not on the reservation have not had, they don't relate necessarily to the tribe and particularly those youngsters who do have significant amounts of other minorities in their blood, in their cultural background; we are concerned about the biological relationships that some of these youngsters have with their non-Indian biological parents and what does this mean if they have, for example, a child who is half Caucasian and has lived with a grandparent on the Caucasian side and has some ties.

The way the law is written in title 1, there may be real restrictions to these youngsters being able to maintain those biological ties and contacts.

We have real concerns about what it means to transfer. What about those youngsters who have more than one Indian tribal background? Which tribe, the jurisdictional question is again, and the time delays. I know as a social worker and adoption worker for many years I have been in courts many times presenting cases on children where there was no question about the parent has time to surrender, there was no question about their cultural heritage or the home. It has still taken a tremendous amount of legal complications and time and we are just really concerned that there may be even more problems in releasing many of these youngsters who have not had, whose parents may want to release them.

Mr. Roncalio. You heard the witness who preceded you regarding, particularly with the Chippewa, the problem of having to have a second notification. I notice your 102(g) criticisms here are the fact that when you have to give notice you think it invades the privacy of parents by having to serve that notice on the chief of the tribe. That is a real problem there.

Ms. Fales. We have concerns, I guess, because we feel that if the parent chooses to move off the reservation and make some determination over the future of their child, that you know this is, I guess I am interpreting and I am not a lawyer so I am not sure I am following the legal language here, but that if the parent has the right to waiver notification and chooses to go into the State court sometimes that seems more fair to the privacy or rights of that parent. I am thinking if you can say if you choose to move to California or say your daughter chose to move to California and have a child out of wedlock, that your own council back in your home town wouldn't have to be notified of the interests of that child or what is happening with that child and have a right to determine the future of that child.

We have some real concerns over that.

Mr. **Roncalio**. Is this a realistic concern?

Ms. **Fales**. You mean that the parents' privacy—I think if they chose not to remain on the reservation, shouldn't they have some right to the privacy of what happens to their lives off the reservation.

Mr. **Roncalio**. That is a little different thing, of course.

Mr. **Taylor**. We had other testimony in this same direction a month ago, Mr. Roncalio, and in fact these are some of the alterations being considered in this revised draft.

Mr. **Roncalio**. What is BIA suggesting in its draft?

Mr. **Taylor**. Among other things, exactly what Ms. Fales refers to. When an application is made for a transfer of jurisdiction of a case out of the State court to tribal court, the parent involved would have some right to consent.

Mr. **Roncalio**. But this is an objection to some chief executive officer of the tribe or other person being also notified. This is the objection that she states.

Mr. **Taylor**. I think the objection is overly broad.

Mr. **Roncalio**. I do, too.

Mr. **Taylor**. The notice is appropriate, but the parent should have a say in the process and that is being considered.

Ms. **Fales**. We also have major concerns about the time period for the youngsters.

Ms. **Buzawa**. Particularly in 101(c) where the bill would allow parent or parents to withdraw consent up to finalization of adoption. We feel this is much too long a period of time. Because that can drag on and in States now it can be 6 months, 1 year, or 1½ years and that would mean that the child and adoptive home is not able to make a commitment to where he is, the parents are not sure, the adoptive parents are not sure any day that consent could be withdrawn.

Mr. **Taylor**. I might say that is another area that is under consideration for some amendments.

Ms. **Buzawa**. We would suggest that 30 days be a sufficient time for the biological parents to be sure that they are doing what they want and that they have had counseling and are fully aware of what is going on.

Mr. **Roncalio**. I am getting so old, I do not understand terms after so many years of practicing law and 10 years around here. What is the distinction between a biological parent and natural parent?

Ms. **Buzawa**. I think the terminology is changed recently. Natural sounds like one thing and unnatural would be something else so biological does not have too much of a negative connotation to it. It is just a statement of fact.

Ms. **Fales**. Social work lingo.

Mr. **Roncalio**. Social worker lingo, OK.

Ms. **Buzawa**. So we would make a suggestion of 30 days as being adequate time to change the consent.

Also, we would like to see some accountability system put into this bill so that every child that is in placement can be viewed or reviewed every 6 months or at some other length of interval. I see a head nodding——

contrary." I think that does leave discretion there. I would hope sincerely that those preference standards would be considered by the social worker as an automatic step in the line, that it is not something to be considered as a brand new element in social work. That to me is what I would believe to be good social work. If those things are not considered then somebody is not doing an adequate job in my opinion.

So, I am concerned about the fact that people tell me that that may be an unnecessary time-consuming step. I think it is a very necessary step. And while it may take some time, I think it should not be underestimated.

Ms. **Buzawa**. What we have also found now is that in most States they do have a preference, and it is working in substance, already working.

Mr. **Taylor**. That is contrary to the evidence that the committee has received because the evidence we are receiving is that of almost all ethnic groups within this country, the sole one that has been singled out for placement of children outside that ethnic group are American Indians.

So, the information we have been receiving in the committee is contrary to what you have said. There is a recent move in that direction.

Ms. **Buzawa**. I am talking about the last couple years.

Ms. **Fales**. That isn't to say that enough has been done. I agree. We do definitely, as social workers, needed an Indian culture, and I think we need a lot more tools to find Indian families, and I think that that is again more help in that regard outside those Indian families living on the reservations who may be interested in adoption. I think there have been barriers put up to them, too.

Ms. **Marks**. This was also discussed by the staff, I would be interested in seeing or hearing any ideas you may have in terms of keeping a register through the Bureau of Indian Affairs or some other Federal agency of potential homes. Some type of national coordination which might alleviate some of these problems.

Do you have any indications of what could be done in this area? We would be happy to review any suggestions that you feel would be helpful.

Ms. **Fales**. In essence, ARENA was set up to kind of do that, maintain the list, the problem has been that we are voluntary and there is no mandate to register families. It is a hard thing to enforce agencies to do.

Ms. **Marks**. Yes.

Ms. **Fales**. And that is the problem.

Mr. **Taylor**. I have read some of your testimony on these different sections, pages 3, 4, and 5. Some of the problems you have noted we have just discussed and are under consideration for amendments; some of the objections you make such as Patty noted, the preference provisions, I think result because your interpretation of the bill is not an accurate one. Non-Indian placements have not been excluded from consideration. And the significant contact test that is contained in the bill is designed to solve the problem that you have talked about where an Indian child is raised outside an Indian setting and has very limited or no contact with a tribe.

In a case like that the judge would have discretion on the application of preference standards and the application of the jurisdictional standards. The whole purpose of the significant contact test was to establish that sort of flexibility.

Ms. Fales. I guess we are just questioning it in practicing. I am fearful in practice of seeing how that might be differently handled by a variety of judges and how it might cause time delays for the process.

Mr. Roncalio. Thank you both very, very much. I got a suspicion we are going to leave the language alone on page 8 and over to page 9 because when we balance all we have heard, it seems as though this tries to solve the problem with the least amount of hassle:

> That no final decree of adoption may be entered within ninety days after the birth of such child or within ninety days after the parent or parents have given written consent to the adoption, whichever is later.

You would prefer that shortened up a little?

Ms. Fales. Yes; I think what Ms. Marks was saying is true for most children under the laws that in the States the parent always has a right to contest in court after the case, but they have to go through the court proceeding in order to do that.

Ms. Marks. You may want to draft up some suggestions specifically, timetables or language that you feel is workable, I have not had an opportunity to read what you have included in your statement, but I would be very willing to talk with you by phone or communicate in letter before we finish up with this. The big concern is that the bill has got to work. It really has to work.

Ms. Fales. That is our concern, yes.

Ms. Buzawa. Yes.

Mr. Roncalio. Thank you both very, very much for helping us.

Suzanne Letendre, Northeast Indian Family Structure Project, Boston Indian Council, Inc., Jamaica Plain, Mass.

We are happy to have you here. We have your statement. You are welcome to comment on this in 5 or 10 minutes if you would like or you can read it verbatim, if you feel better doing that.

[Prepared statement of Suzanne Letendre may be found in the appendix.]

STATEMENT OF SUZANNE LETENDRE, DIRECTOR, NORTHEAST INDIAN FAMILY STRUCTURE PROJECT, BOSTON INDIAN COUNSEL, INC.

Ms. Letendre. I think I prefer to read it.

Mr. Roncalio. Fine.

Ms. Letendre. Good morning, Mr. Chairman and members of the subcommittee.

I am here to speak about the needs of Native American families residing in the Northeast and the discriminatory nature of the Indian Child Welfare Act of 1977. We—and I speak on behalf of the Northeast Indian Family Structure Project and the Boston Indian Council, Inc.—we do not challenge, but rather, strongly support those sections of the bill which insure tribal court and tribal council, a significant degree of authority in matters regarding the future of our children when foster care and adoption determinations are made.

We do not object to the definition of "tribe" in this instance being limited to those tribes served by the Bureau of Indian Affairs. We also approve of those sections which provide for the involvement of Indian organizations in areas of family development and child protection. However, we most adamantly object to the definition of "Indian" and "Indian organization" (section 4(b) and (d)), which deal with Indians outside the tribal context and which, if enacted, would unfairly exclude the vast majority of native Americans in the Northeast from benefits, protection and much needed assistance provided for in the bill.

In the greater Boston area alone, where approximately 4,000 Native Americans reside, we estimate as many as 300 Indian children have been placed in foster or adoptive placement, the great majority of which were placed in non-Indian homes. In Maine where the constituency, family structure and child-rearing practices closely resemble those of Native Americans in Boston and which is the only New England State with available statistics, Indian children are placed in foster homes at a per-capita rate 19 times greater than that for non-Indians and two-thirds of such Indian children are placed with non-Indian families.

The American Indian Policy Review Commission found that Aroostook County, Maine had the highest placement rate of any county. This current rate of family disruption that is occurring amongst the Maine-Massachusetts Indian population has not gone unnoticed. Both the native American community and the U.S. Department of Health, Education, and Welfare have recognized the need for special intervention and prevention programs for Indians in the Northeast. They also have begun to take steps to develop a program to address the situation.

The U.S. Department of HEW has granted the Boston Indian Council, Inc., a small amount of funds on a short-term basis to initiate a Northeast family support project to meet the special child welfare needs of Indian people in New England. However, it is highly improbable, considering the ceiling on State title XX funds, that the State will be able to sustain this program beyond this year.

The project is a joint effort of BIC and two Indian organizations in Maine, the Central Maine Indian Association in Orono and the Association of Aroostook Indians in Houlton, to ensure the integrity and stability of off-reservation Native American families. It is the hope of the project staff that this collaborative effort will protect the ethnic heritage and political birthright of native Americans, enlighten social institutions to the unique needs and problems facing the Indian community, and change the current patterns of foster care as practiced for Indian people by non-Indian social service agencies.

Since the commencement of the project, our staff has had to deal with numerous blatant injustices on the part of social agencies with regard to native American families in the Boston community. Two such instances dealt with single mothers who had their children taken from them on rather dubious grounds and who desperately sought our support to help them regain custody of their children.

The first case deals with a mother who had her child placed in foster care because on one occasion she was not at home when her child returned from nursery school. When the mother requested our assistance in getting her child back, we immediately contacted the social worker involved and asked on what legal grounds was the child removed?

The social worker was speechless for there was no legitimate grounds on which she could justify her department's actions. Fortunately in this case we were instrumental in quickly reuniting the child with her mother and bother.

The second case involves a young mother who is presently in a foster home and who has spent the most part of her life drifting from seven different foster homes. A few months ago she also had her own child taken from her.

For several months the State retained physical custody of her child without filing any petition, thus without filing any petition, thus without the appropriate legal sanctions for removing and retaining the child. When this matter finally came before the court, legal custody was then temporarily transferred to the State. The mother is now faced with a very difficult and demoralized process of trying to prove that she is, in fact, a fit and capable mother.

Since the social agencies involved disapprove of raising the child in the mother's foster home where five other Indian children are currently being cared for, they recommend that either the mother change foster homes, thus continuing the transient foster care syndrome or have the 17-year-old mother move into her own apartment, thus face the economic and emotional adjustment to urban living alone.

When we examine the Indian Child Welfare Act section 2(a), we find the problem facing our native American constituency in the Northeast precisely as described in the bill. Yet by virtue of a most restrictive definition of "Indian" therein the benefits of the bill become regionally discriminatory. Hence, the proposed legislation which purports to be a general act, that is, Indian Child Welfare Act dealing with a generic problem, in fact, fails to do so by failing to address the problem as it is felt by those native Americans who are not included in the bill's restrictive definition of "Indian."

This definition of "Indian" is contrary to the drift of Indian legislation in the past two decades: Where Congress has dealt with Indians outside the tribal context, a broader definition has always been used, for instance in (1) CETA title III, (2) ANA urban and rural grants, (3) Indian set-aside for nutrition in CSA, and (4) Indian Education Act.

One clear example of a less-restrictive definition can also be found in the Indian Health Care Improvement Act, which I believe was dealt with by this committee and which is enclosed with my testimony. Our question is on what rational basis should this bill break from the longstanding policy of Congress most recently included in the Indian Health Care Improvement Act? We strongly object to the use of the Indian Child Welfare Act to narrow the definition of "Indian" outside the tribal context. Such an action puts in jeopardy Indian children and families who, based on this bill's preamble, should be included.

We realize that some of these services' eligibility issues may be solved when the administration or Congress solves its recognition policy, but no one can be certain about when or how such a policy will be implemented. Even when such a policy is, in fact, implemented, a significant portion of native Americans who are in need of assistance will still be ignored such as: (a) those members of State-recognized tribes who may not seek or who are unable to seek Federal recognition, (b) fullbloods with less than one-fourth of any one particular tribe who are nevertheless denied membership to a tribe because of their blood quantum, (c) members of decendants of members of tribes terminated since 1940, (d) those terminated individuals of federally recognized tribes, and (e) individuals who lost tribal status as a result of relocation.

Hence, those native Americans who are faced with adjusting to off-reservation living, who lack the support and assistance of their tribal courts and councils, who are alienated in urban settings and lost in a world unaccustomed to the Indian way of life and the Indian family structure, and who, in fact, make up a significant portion of the alarming national statistics on Indian family disruption, are ignored by this bill, left stranded, unassisted while they watch in bewilderment the termination of their parental rights and the placement of their children with people who are total strangers to them.

Clearly there is no morally justifiable basis for supporting the restrictive definition of "Indian" found in this bill. We recommend that section 2(b) be amended in line with the definition of "Indian" found in section 4(c) of the Indian Health Care and Improvement Act, so that benefits under sections 202, 203 and 302 will be available to a broader category of native Americans. Within the context of tribal jurisdiction and services the definition can be narrow, but in the broader context of off-reservation Indian organizations a more expansive definition must be used.

We urge that you reject an arbitrary policy that would unfairly determine which native American children will be blessed with the comfort and security of growing up with their families and communities and which will be torn from their families, their mothers and fathers, brothers and sisters and robbed of their Indian identity and political rights.

Mr. Roncalio. That is an excellent statement. You have given us a lot of things to think about.

Something will have to be done about a definition of an Indian, and I am sure it will be. Probably the one we came up with earlier which you said we could take out of the act last year.

Mr. Taylor. It is a question, Mr. Roncalio, that we will have to put before the committee, and it is a political decision.

Ms. Marks. They will make the decision, yes.

Mr. Roncalio. Thank you very, very much.

I am going to be leaving in a few minutes, but I will ask the chief of staff, Frank Ducheneaux, who is a Sioux, to help us with this and maybe listen to the last one or two.

Right now we can have Ms. Beauprey, Great Lakes Inter-Tribal Council, Ashland, Wis.

Are you here, ma'am?

You can read your statement if you like, or you can put it in the record and comment on it, either way.

[Prepared statement of Trilby Beauprey may be found in the appendix.]

STATEMENT OF TRILBY BEAUPREY, DIRECTOR, ALTERNATIVE LIVING ARRANGEMENTS PROGRAM, GREAT LAKES INTER-TRIBAL COUNCIL, INC., ODANAH, WIS.

Ms. **Beauprey**. I will read it, Mr. Chairman.

Mr. **Roncalio**. All right.

Ms. **Beauprey**. I would like to start with good afternoon.

Mr. **Roncalio**. It is just about that time, yes.

Ms. **Beauprey**. As with others, I am new to this, so I will——

Mr. **Roncalio**. Let me interrupt you. I am supposed to be in three other places. You have heard of the Humphrey–Hawkins bill and what it does for people who need housing and jobs? Well, it is pretty important in creating jobs. It is on the floor now, and they have some problems about needing all good, loyal and faithful Democratic members to help in consideration of the bill. Let us know what you have. What we would like you to do is hit the high spots. Will you do that for us?

Ms. **Beauprey**. OK. I guess, as with everybody else, I do have some suggestions and recommendations on some of the wording in the Child Welfare Act.

I guess I will kind of give you some information that I have come up with.

I am Trilby Beauprey, and I am a Menominee Indian from the State of Wisconsin. I am presently the director of the Alternative Living Arrangements Program with Great Lakes Inter-Tribal Council, Inc., in Odanah, Wis.

This is in the second year of funding through Wisconsin's LEAA program of criminal justice.

Our program is responsible to the Great Lakes Inter-Tribal Council, Inc., service area encompassing 10 Indian reservations in 31 of the 72 counties of Wisconsin. It was my job, along with two other staff members, to recruit foster parents who were native American. Their homes would serve as emergency temporary shelter care facilities for 12- to 17-year-old native American status offenders.

I would like to put you in touch with additional information, feelings, and national statistics which will help you envision the plight of my people today.

Dr. David W. Kaplan in his address to the Seventh Annual North American Indian Women's Association Conference, June 14, 1977, says:

> The native American family system has been and is subjected to enormous economic, social and cultural pressures. Although the traditional extended family exists in many places and kinship ties remain strong, it is clear that the old ways are not so powerful and widespread as they once were.

S. 1214 can help build and support the Indian family who has been or is weakened because of disruptions to its structure. S. 1214 is important and deserves your full support.

Dr. Kaplan continues:

> Certainly poverty, high unemployment, poor health, substandard housing and low educational attainment impact tremendously on the strength of the family but equally important is cultural disorientation and loss of self-esteem.
>
> The American Indian still ranks lowest in per capita income of any national racial group with a per capita income of 46 percent of white American income. 48 percent of all rural Indian families are below the poverty level.

> Accidental death rates experienced by the Indian population remain higher than the U.S. total rate (figure 1). The accidental death rate for Indian children ages 1–4 is three times the national level.
>
> Some of the symptoms of cultural, community and family distress are the high suicide and homocide rates, the number of accidents and, of course, alcoholism and drug abuse. Serious manifestations of these trends are reflected in the precipitous climb in the rate of juvenile crime.
>
> For young adults ages 15–24 years, the suicide rate is four times the nation as a whole and the homicide rate is about three times the U.S. total (figure 2). And the major epidemic of alcoholism continues to spread. (Figure 3.)

By recognizing these horrible facts, we can understand what it means when we read in S. 1214 findings, section 2(c).

> The separation of Indian children from their natural parents including especially their special needs, is socially and culturally undesirable. For the child such separation can cause a loss of identity and self-esteem, and contributes directly to the unreasonably high rates among Indian children for dropouts, alcoholism and drug abuse, suicides and crime. For parents, such separation can cause a similar loss of self-esteem, aggravates the conditions which initially gave rise to the family breakup, and leads to a continuing cycle of poverty and despair.

S. 1214 in Findings, section 2(a), finds that:

> * * * an alarmingly high percentage of Indian children, living within both urban communities and Indian reservations, are separated from their natural parents through the actions of non-Tribal government agencies or private individuals or private agencies and are placed in institutions (including boarding schools), or in foster or adoptive homes, usually with non-Indian families.

I would like to share with you, further, information concerning Wisconsin Indian adoption and foster care statistics which were part of an Indian child welfare statistical survey, July 1976, as it pertains to the State of Wisconsin.

This comes from the Association on American Indian Affairs.

I would not outline all the information contained in the survey, but have included it in my testimony as a matter of report.

I am interested, however, in relaying to you pertinent concluding remarks regarding foster and adoptive care of Indian children in the State of Wisconsin.

There are 10,176 under 21 years old native American Indians in the State of Wisconsin.

There are by proportion 17.8 times as many Indian children as non-Indian children in nonrelated adoptive homes in Wisconsin. There are by proportion 13.4 times as many Indian children as non-Indian children in foster care in the State of Wisconsin.

By per capita rate, Indian children are removed from their homes and placed in adoptive homes or foster care 15.6 times more often than non-Indian children in the State of Wisconsin.

The Wisconsin statistics do not include adoptive placements made by private agencies and therefore are minimum figures.

A list of changes that I see as desirable in S. 1214 are as follows, and I hope that in hearing these that you will offer whatever comments you may have to make.

Through Great Lakes Inter-Tribal Council, Inc., opportunities exist for tribal members on various reservations to identify native American families interested in providing a home for the placement of an Indian child or children.

Foster homes are available for emergency situations described as an "immediate physical or emotional threat" to the child in S. 1214.

Therefore I would omit—and I give a series of sections and lines—from it the "temporary * * * threatened inclusive" and substitute the following for each of the omissions above:

Under circumstances when the physical or emotional well-being of the child is immediately threatened, emergency temporary placement is to be within the reservation or county of a cooperating blood relative, private Indian individual, Indian family, Indian tribe, or Indian organization which offer such placement facilities/home(s) (if these facilities have not been exhausted through contacts as resources no child placement shall be valid or given any legal force and effect).

I support this type of change because I sincerely believe, as it has been my experience, that there are viable Indian people resources within the reservation and the county to meet these needs. I would urge that only after these resources have been exhausted that any other placement be allowed.

I see S. 1214 giving Indian tribes jurisdiction over the welfare of a precious resource: their youth. That is why I do not object to the written notices, however, without any specifications as to "when" the 30 days commences is ambiguous.

I propose for:

Section 101(b) line 11;
Section 101(c) line 24 omit "of";
Section 101(d) line 6; and
Section 101(e) line 22.

The following be added: "being made via registered mail and the 30 days commencing with the tribal governing body's receipt of such notice."

Mr. TAYLOR. You will be happy to know we have an amendment like that under consideration.

Ms. BEAUPREY. You do? Well, I would like to see it made possible for the tribes as well as the families to know all parties—"prominent ethnic background"; within section 101(d) line 13 and "their phone number or the phone number of a consenting neighbor"—within section 101(d) line 13.

Knowing the prominent ethnic background of the parties involved will help to establish whether or not this child will be placed with people compatible with that child's background.

If it becomes necessary to contact any of the parties, it would be advisable to obtain the involved parties' telephone numbers.

Also, although I hold deep respect for the decision of a judge, I would not want to see a determination passed down on whether a child is Indian or not based solely on the judge's or a hearing officer's discretion, rather, under section 101(e), line 2, after "notified" include:

> To further insure that the best interests of the child are adhered to in making such a decision an advocate for the child in question must be present and heard.

When withdrawing from an adoptive child placement, I believe the family should be given the right to withdraw the child at any age. Therefore, under section 102(c), line 12, "and the child is over the age of 2," should be omitted.

I want the tribal governing body to be aware of what is happening to its youth. That is why, under section 102(c), line 18, after "adoption" I would add: "and the tribal governing body has been notified via registered mail of this action."

Under title II, Indian family development: We have been recruiting foster homes on the reservations and the counties in which the reservations are located. Therefore, I do not want to see Indian organizations limited to off-reservation Indian family development programs. I hereby request that an Indian organization be given the sole right to determine whether it wants to carry off-reservation or on-reservation Indian family development programs.

I would then change:

Section 201(c), line 8, after "reservation" to include "or on-reservation".

This would give Indian tribes within an Indian organization the option to carry on an Indian family development program as a statewide project for people on or off the reservation. The following revision permits such a decision:

Section 202(a), line 22, after "Tribe", to include "or Indian organization".

Section 202(a), line 23, after "operate", to include "on the reservation or off the reservation".

I see great possibilities under this act for nontribal Government agencies to contract for the Indian organizations' foster homes resource.

Therefore, under section 202(b), line 23, after "Tribe", include "or Indian organization".

An Indian organization can determine for itself whether it wants to operate an Indian family development program off or on the reservation under the act.

Therefore, under section 203, line 9, after "reservation", include "or on reservation".

Our office has been approached to investigate the well-being and best interest of a youth already in placement by a member of the extended family and/or a private Indian individual, and I would like to see:

Section 204(a), line 19, after "requests," to include "or where the natural parent, Indian adoptive parent, blood relative or guardian does not exist or lacks the ability to care for the child. Then together or separately, an interested private Indian individual(s) and the adolescent in question may request placement in an Indian foster home that desires the child.

And, section 204(a), line 1, to include after "restoring," "or permitting."

And, section 204(a), line 4, include after "left," "or in the case of an interested private Indian individual to allow a child placement to be made."

Dr. Kaplan concludes:

> The Indian culture with its customs and traditions, especially that of the Indian extended family, is a very valuable heritage and must not be lost. There is much we have to tell and teach the culture threatening our demise.

S. 1214 can only be effective if you assure available appropriate funds for the attainment of its purpose and its life. In developing this, I would encourage the Secretary to involve more Indian people in its further development. Thank you.

Mr. **Ducheneaux**. Thank you, Ms. Beauprey.

On behalf of Mr. Roncalio, I would like to thank you for your statement.

The staff will take it into consideration. As Mr. Taylor indicated, some of the changes you recommend are already under consideration by the staff and by the subcommittee, and we will consider the rest to see if we can make the changes you recommend.

I do not have any questions.

Mr. Taylor. No questions.

Ms. Marks. No questions.

Mr. Ducheneaux. Thank you very much.

Ms. Beauprey. Thank you.

Mr. Ducheneaux. Our next to the last witness is Faye La Pointe, coordinator for social services for child welfare, Puyallup Tribe, Washington.

STATEMENT OF FAYE LA POINTE, DIRECTOR OF SOCIAL SERVICES FOR CHILD WELFARE, THE PUYALLUP TRIBE, WASHINGTON STATE

Ms. La Pointe. Thank you. I am here again.

The Puyallup Tribe Council heard a couple days ago that the bill, as it came out of the Senate, was "dying."

Mr. Ducheneaux. Ms. La Pointe, are you going to read your statement or submit it for the record?

Ms. La Pointe. Yes, I did submit.

Mr. Ducheneaux. It will be admitted for the record.

Ms. La Pointe. We have been here before. Our tribe has sent a delegate down every time there was a hearing.

A lot of our recommendations have been incorporated into the final bill as it came out of the Senate.

They asked me to come in and reenforce the idea that they believe that the bill was ready when it came out.

There are a couple things I would like to address, and I have to excuse myself because I have a bad cold, and my ears pop, and I can't hear a thing anybody says.

But, when we talk about confidentiality, I think I pretty well addressed that as it came from the tribal council.

About the rights of the unwed mother, confidentiality rights, and whether she wishes to give up her child and relinquish rights to her child, I have heard a lot of testimony about what should happen to the child. They should have various opportunities to go to a good home—but what we live with in the urban area and on the reservation is that unwed mothers, once successful in relinquishing that child, she comes back to the Indian community and suffers from shame, humiliation, and that kind of thing. And she ends up in self-destructing herself through alcohol—whatever means—suicide.

I think that I have heard some social workers talking about benefits for the child, but there is not a whole lot of followup for that unwed mother. We live with it, you know, we live with it every day.

We face frustration because we have come here, you know, we have looked for dollars for social services, and we have gone to the Bureau, and they have been helpful. We have gone to the Indian Health Services Mental Health Bureau seeking assistance.

I feel very bad that the bill is dying at this point. We know that we can work with urban organizations. Puyallup is, in fact, in an urban area. The Puyallups, by definition of the Federal Government, are urban Indians.

I kind of have to smile when I hear another definition for an Indian because I kind of get into trivia once in a while, and about a year ago I counted 175 different definitions of what is an Indian. Now I am hearing we are going to have another one.

We can work, you know, with urban organizations. We do in Tacoma. We have a model there in Tacoma.

I would urge this committee at this point to support the bill as it is written.

Mr. DUCHENEAUX. Ms. La Pointe, I think perhaps I should say to you that, at least as far as the subcommittee chairman is concerned, and I hope the other members of the subcommittee, this bill is not dead.

It does appear from the witnesses, yourself and others, that it may require additional work in terms of amendments and changes to fit all the situations we are trying to deal with, but the bill is not dead.

I think we are going to move it along. Perhaps not as rapidly as the Senate, but I think we will move it along.

Ms. LA POINTE. Can I ask, are there any time limits on it? The rewrite will come out next month, will it?

Mr. DUCHENEAUX. The subcommittee will complete hearings today, and then will work on amendments both through staff discussions and through meetings in 2 or 3 weeks or so to work on the bill further.

It will take some time, but I just want to assure you that the bill is not dead.

I had one question. I did not see it so much in your statement, but you talked about confidentiality. Could you expand on your comments on confidentiality a little bit?

Ms. LA POINTE. In our area, we through the State department of health and social services, have workers coming to us saying you can't do this—Indians are not ready, their tribes are not capable of handling confidentiality.

My response to them is, you know, we have proven it. Ask any FBI agent that was looking for an Indian fugitive in Indian country.

Ask us to support enforcement from DSHS when they are looking for a father. We do know how to handle that.

Mr. DUCHENEAUX. Is it your position that the tribal government is at least as able and willing to preserve the confidentiality of its members' affairs as the child placement agency?

Ms. LA POINTE. Sure. It has been our experience since we have been involved in Indian child welfare there has only been one unwed mother in 3 years that has requested that confidentiality. To my knowledge that has never been violated.

The child is an enrolled member, and you know some day, if he wants to, he will find out.

Mr. DUCHENEAUX. I have no further questions.

Ms. FOSTER. To clarify, you described the mother coming back to the reservation as being in a state of depression. You are saying that is because she is reconsidering what she has done and she wished not to have done it?

Ms. **La Pointe.** Yes.

Ms. **Foster.** Maybe you can elaborate.

Ms. **La Pointe.** Yes; I heard there was consideration in shortening that time for reconsideration, and I would not like to see that at all. I would rather extend it.

Ms. **Foster.** Do you feel most of the mothers, when they give up their child, give the consent, and they later regret it?

Ms. **La Pointe.** Right. We know that by experience.

We have been working with Indian child welfare for many years now.

Ms. **Foster.** Do you have in here, or would you be willing to write, the consent waiver provision in such a way that it will take care of your concern and also wherever you disagree?

Ms. **La Pointe.** Sure.

Mr. **Ducheneaux.** Patty?

Ms. **Marks.** I think just for the record and for your information, because I was talking to Don Milligan the other day, Senator Abourezk spoke with me last night for quite an extended period of time, and he also spoke with Mr. Roncalio, and I think that his concern is basically the same as expressed by Mr. Ducheneaux, that we are not talking about something that has a number, such as S. 1214, or S. 2000, or a H.R. 501. What we are talking about is basic provisions that we have to get through.

That may take changing some numbers around, changing some organizational provisions, and so forth. But I think that at least his personal opinion, and my understanding the opinion of Senator Hatfield and Senator Bartlett as well, is that at this point in time we are going to work for the provisions and forget about the numbers and get something through that is, above all, workable, because a bill that will be vetoed or a bill that is going to reach constitutional problems 6 or 8 months after it is passed will be useless.

We have to try to find a middle road. I think that that is where we are at, at this point.

Mr. **Taylor.** If I could add one thing to it.

There are very few minimum areas in here where a change in direction of the bill is being considered. Some of the parental acceptance of a transfer of jurisdiction to a tribal court, a few areas we talked about today, are in discussion. But for the most part the people found this language in here very confusing, and I think a lot of the testimony, as we saw this morning, reflects that confusion.

So I believe what's really happening here is, we are retaining this bill almost in its present form, but we are trying to give it clarity that it apparently does not have right now. That's really what has happened.

Mr. **Ducheneaux.** If that completes your statement, I want to thank you very much for coming.

Ms. **La Pointe.** Thank you.

Mr. **Ducheneaux.** Our last witness, and not the least important by any means, is Mr. Robert Barker, attorney and special counsel for the Church of Jesus Christ of Latter-day Saints. With the firm of Wilkinson, Cragun, & Barker.

I am sorry we held you so long.

Do you have a prepared statement?

STATEMENT OF ROBERT W. BARKER, SPECIAL COUNSEL TO THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

Mr. **Barker.** Yes, Mr. Ducheneaux, and I would like the statement to be made a part of the record.

Mr. **Ducheneaux.** On behalf of the chairman, it will be made a part of the record.

Mr. **Barker.** I would like to address myself to a couple questions here.

I have been very interested to hear the testimony this morning because in my 30 years of practicing, I have represented Indian tribes during all that period of time, and I realize there is a very serious problem that needs attention.

I would like to say that I appear here today on behalf of the Mormon Church, and the church certainly does not oppose this legislation. Our sole purpose is to be sure that in enacting this legislation and addressing ourselves to a very complex and serious problem, that we don't by oversight do anything that will interfere with the ability of the Indian people to carry on voluntary programs which they consider to be beneficial to them, and we are particularly concerned about the Indian student placement program of the Mormon Church which was developed solely in response to requests of the Indian people themselves, parents of Indian children, that the church assist them in allowing their children to reside off reservation to better their educational experience.

Now, this was in response to desires of parents of children who are members of the church.

I want to make clear that this is not a guise for any other program in response to Indian children and their parents that we assist them in their educational program.

I want to make clear, too, that our program is only temporary in nature, it is not a permanent adoption of any kind. The ability of the parents to regain the custody of the children at any time at their request or the desire of the child to return is recognized as an essential part of the program.

Now, with that in mind I think that that changes the perspective maybe that some people have of the program.

We are concerned that the literal language of the bill might be construed as to preclude the voluntary consents of parents and the desires of the parents, and we feel that there is no one better qualified to look after the interests of Indian children than their parents.

So we feel that the bill should not intentionally or otherwise—certainly not unintentionally—infringe upon the constitutional rights of these parents, and we would urge an amendment be enacted.

My testimony directs itself to an amendment to the existing bill. Certainly the provision of the first sentence of the amendment to the Senate bill dealing with this. Section 102(h) is acceptable to us, but the notice requirements we have suggested be slightly modified mainly to comply with our practice that we have experienced in working with the Indian tribes.

We have some 2,700 students that are involved in this program. We deal with some 75 tribes, some formal and some informal, some that are recognized and some that are not recognized, and about three-fourths of these students right now, at the request of the chief executive officer, we send to them the information on the child, the names and addresses of the natural parents, the name and address of the family with which the child is residing, so that, if at any time the tribe needs to get in touch with that child or its parents, natural parents or the parents of the family with whom the child is residing, they can do so. There are emergencies and things like that that may justify this.

So we do, at the request of the tribe, when we know they are wanted and they are interested in it and are in a position to handle it, we do furnish that now, and we would propose to continue a similar program.

We would urge that it not be unduly encumbered by enlarging the information beyond that which is really necessary and desirable because this program, after all, is a noncompensated program.

The church provides this as a service for its members, and we only have a limited budget. We want to keep it as simple and as practical as possible and not get into unnecessary expenses.

The second thing is that there is no expense paid by the Indian family at all for this program. The expenses really are incurred by the host family who agree to take the child into their home and treat them as their own child and pay all the expenses of their living and education and everything as if they were one of their own children.

But, of course, they also undertake it on the understanding that they will continue their relationship with their own family and their home and try to cultivate their appreciation for their culture and their relationship with their immediate family.

Now, I have looked into this several times over my career and talked with people who have grown up and lived in the program.

I am not going to encumber the record here, Mr. Ducheneaux. We put in a lot of material on the Senate side, of letters and testimonials and comments that had come from many Indians all over the country, Indian parents who felt very strongly that this program should be not encumbered, Indian children who were in the program, and tribal leaders who had gone through the program were serving as leaders in their tr[illegible] now and felt strongly for the benefit of their people that this program should not be encumbered.

Now, it is my understanding that the intent of this legislation is not to interfere with this voluntary type of program. I think it is just a question of being sure our language is correct, and we want to be careful that it is not unintentionally restrictive.

We will cooperate in any way we can to see that the language of the bill is clarified so it will not be.

We again want to emphasize that we are not opposing the legislation.

I would just say, I have a couple comments as someone interested in the Indian people over the many years having observed some of their legal proceedings, that we have got to be very careful with this legislation, to make it work.

Number one, we have to not create a constitutional block on the rights of these Indians so somebody will litigate and tie it up in courts and it won't just be workable. I think there are ways to write this in such way so we won't face these constitutional challenges.

Number two, we have in this country a large spectrum of Indian tribes. We have one like Navajo, which is highly organized and well financed and able to carry on extensive programs.

We have another little group like the Shevwitz that I bet you there is no one on this committee knows how to find the chief executive officer and could not do so within a period of time because they are very dispersed and not organized.

Now, what one group like the Arapaho Tribe of the Wind River Reservation, in the chairman's district, whom we represent, what they can do is one thing, and what a highly fragmented tribe with just a few members and no finances can do is another thing.

I am very concerned that we not impose a burden on tribal courts which they are not able to carry. I am not saying this in the point of view of the church. I am observing this from my point of view in writing this legislation for any help it would be to the staff. I know, for example, that the key court officials in Navajo are very concerned about what kind of inundation would occur in their courts under this legislation, and it does not do us any good to impose a burden on the tribal courts or family courts in the States which they just cannot handle.

So my thought is that, in writing this legislation to meet our target and our need and to get relief we need in this area, we should be very restrictive in our language, target it in to hit what we want to do, and be careful not to blanket in unintended programs that shouldn't be affected or create controversies.

Now, there is one other thing I would like to say, as implied in my statement, and that is that we are dealing with a social problem, socialworkers, and they are in the nature like lawyers and doctors, they have a confidential relationship with the people they deal with.

From the church's point of view in furnishing these lists to the tribes when they have shown a concern and interest, we have not had a very practical problem of having any substantial objection to them.

I do feel, though, that if any parents or any child, say, over 12 years of age who knows what is going on indicates a strong objection, that we would have a problem of ethics of whether we should disclose information that that parent and child had not wanted disclosed.

I don't think there will be very many, but to avoid any technical, constitutional problem, it would be well to provide that, if people have objection to giving notice to the tribe, that they could instruct or direct that it not be given. Then it would not pose any technical or legal argument, and as a practical matter—this probably occurs very, very seldom—but most of our notices will be given.

Another thing I would like to address my attention to from the point of view of practical experience is the problem of automatically requiring notice to the tribe.

Now, when I think of the Navajo, when I think of the Shoshone at Wind River or the Arapaho at Wind River, or the Menominee, something like that, that is no problem. Everybody knows where the tribe is, everybody knows who is tribal chairman, and what to do about it.

But there are some groups that are very hard to keep up with and know who they are. When I went back to the Senate committee—I mentioned this problem in my testimony—I was very curious to notice that the next day my secretary was on the phone, and I said, "What were you talking to the Bureau about?" She said they were calling to see if I could give them the names and addresses of the chairman, the secretary, and the tribal council of three of our tribes.

They said that for almost 2 years now they have been trying to get this from the field and their lists are 3 years out of date.

So they have to come to us to get them. Now, it is not easy for someone like a church organization or somebody not dealing with these people daily to know whom to send this information to. Now, it is not that we don't have confidence in their ability to handle this information because, when we have an organized tribe with competent people like we have heard here today, they are as able to handle this information as anybody in the non-Indian field, maybe somewhat more sensitive to the problem and the needs. And we have had great confidence in them.

But, on the other hand, we, as a church, having confidential information given to us through the social services, wouldn't want to sit down and make a list and mail it to the last-known post office box and it might get to anybody, into anybody's hands, including people running promotions and gimmicks and lotteries and research projects and things who would completely invade the privacies of these families.

But, if we send it to the chairman, if he wrote to us and said, "Please send us this information, such and such," we would have no hesitancy because we know he is responsible and he would see that it was properly used.

But, to go to some unknown person with it, it may never get to the chairman or designated tribal people, it may go to someone 4 years out of date and getting his mail a long ways away from the reservation, then we can see problems of confidentiality. So that is the reason we proposed the approach in my testimony.

I would again like to say there is a real need here.

We commend the committee and those who have worked on it, in their efforts to meet it. I know this because I have had two sons who have been missionaries among the Indians in recent years, one in the Southwest, in Arizona and New Mexico, one in North Dakota and South Dakota, and they both told me that this is an area that needs attention, and I commend you for doing it. And I just again caution us as we move to do it so it is workable both from the constitutional, legal point of view, and, second, that we are not putting a burden on so we create a bottleneck so that it cannot function.

Mr. Ducheneaux. Thank you, Mr. Barker.

I want to apologize for the chairman not being here. As he indicated, there is some very important legislation on the floor and other Members I am sure are there, too. I really wish they had been here to hear your testimony. Mr. Roncalio specifically asked that your statement be provided to him.

Mr. Barker. I appreciate that, Mr. Ducheneaux.

I know their heavy burden and they have to be several places at once. So, I am sure they will learn of what I had to say.

Mr. Ducheneaux. I have a few questions.

One deals with the main thrust of your statement, and that is the church's program. It is a very sensitive area and I hate to get into it.

I wish one of the members were here to ask you the questions about it.

I understand some of your concerns about provisions of the bill with respect to notification of the tribe. One of your statements was that if a tribal chairman wrote to you, the church would very willingly make available the information requested with respect to the child.

Does that not impose an unrealistic burden on the tribe to be aware that the church has a child in one of their homes in that program?

How are they to know in order to write a letter asking for the information?

Mr. Barker. That is a fair question, Mr. Ducheneaux.

I think the answer is more of a practical experience than anything else and that is this: That we operate this program in certain areas, and I am sure that each of the tribes in the areas we operate know the area and if they had any doubt, of course, they could just inquire.

My point is this: That they know where we operate and they also know our schedule, that is, we take these opportunities to go into school about the first of September or end of August each year.

Now, the only point I am talking about is that we have worked this out with the tribes where we operate that are concerned. Now, what I am saying is that we are only—they just merely ask us to send it to such-and-such a place so that they tell us how to direct it so that we are getting the right location.

They have no problem because they know each year that they want this and we have a working arrangement for example with the Navajo and the Sioux. Well, send it to where they desire and it comes in promptly after the placement is occurring.

What we are trying to avoid is not the main body of our people that are involved here, but rather the fringe little groups that was mentioned here today.

Suppose we have somebody in Idaho who is a member of the Indians of California. I know from having tried a lot of lawsuits involving Indians of California, there are 500 tribes, bands, or groups in California.

That is the Kroeber list of Indians of California. Now, if I don't—if suppose they are descendants of four different tribes, bands, or groups then one Miayana, one might be a something or other, might be from the Okiya group, one might be from someplace else, but they have no relationship with the tribe, they are living in Idaho—it is very difficult for the church to determine with that child in Idaho whose parents might descend from maybe four different groups, and if the parents have no relationship with the tribe, how we would comply with this if the tribe didn't say they were interested.

Now, our point is if an organized group——

Mr. Ducheneaux. The bill as sent over here requires this notice and defines an Indian tribe. That is defined in the bill as a certain thing, an organization, a governing body. How is this governing body that you are talking about in California, this small tribe of California, any of the small tribes, how in the world are they to know that one of their tribal members or a child of their tribal member in Idaho, is going to be entering this program so that they can request the church for that information?

Mr. **Barker.** Doesn't that get back to the practical problem, if they had our notice, would they be concerned and would they use it or do anything with it—in other words, if they have no continuing relationship with them and it might be any one of the 500 bands or groups in California, if the person is in Idaho, and their parents are in Idaho, and if we then sent notice to all four of those groups that they were descended from, if we could find out who they were and where they were?

Mr. **Ducheneaux.** The bill does not reqiure that. The bill only requires that notice be sent to the chief executive officer of the tribe in which the child is a member.

Mr. **Barker.** My point is, Mr. Ducheneaux, my own experience at Fort Duchesne, Utah, with the tribe, the chairman of that tribe Rex Curry, who is now dead, but he told me—I asked which roll are your children on—he has four children.

I have two on the Uintah roll, two on the White River roll, and then we will have another one that will be on the Ontrepaga roll.

My point is that when you say the tribe of which they are a member you get into problems of how you determine that tribe. Who do we notify? Do we notify the chairman of the Uintah band or White River band or the chairman of the Ontrepaga band?

If they have absolutely no concern, they are out in California a long way away, isn't it as a practical matter very easy—they know that on the 1st of September if they are concerned and want to know whether they have any children they could write and say I am chairman of the Myana band, our address is so and so, will you please advise me whether you have any children on placement.

We would be glad to respond to that and we would respond to that, and if we had somebody on placement, we would send them the information unless the parents have indicated an objection under my program.

I do not believe the objection would occur. I am not saying this by way of the church wanting to avoid the thing, I am saying something on your writing of legislation which is practically feasible to work.

You can tell us to send a notice and we will inquire of the Bureau of Indian Affairs and even this committee and that committee and find out if they know, but if we cannot find out and we cannot comply, if we cannot determine who to send it to, you are writing an impossible, an unconstitutionally vague language.

Mr. **Ducheneaux.** There is a law on the books——

Mr. **Barker.** Yes.

Mr. **Ducheneaux.** It has not been observed probably in the last 50 or 60 years, but it is on the books.

Mr. **Barker.** Let me see what it is, maybe we can work it out.

Mr. **Ducheneaux.** Section 286 of title 15, United States Code. It provides that no Indian child may be removed from a reservation by anybody without the consent of the parents and further it provides that——

Mr. **Barker.** On that so far, of course, we have the consent of the parents.

Mr. **Ducheneaux.** It further provides that the consent must be before the superintendent of the reservation in writing and he has to send that notice to the Commissioner of Indian Affairs.

Is that unconstitutionally vague? Is that an unfair requirement on anybody taking an Indian child off a reservation?

Mr. **Barker.** My suggestion, Mr. Ducheneaux, is that that statute as interpreted with its legislative history would not apply to the kind of educational experience for the consent of parents we are talking about.

You could look at the legislative history of it; you are talking about permanent removal.

Mr. **Ducheneaux.** No; it says no child shall be taken for educational purposes beyond the reservation.

Mr. **Barker.** I think that the courts would not apply it in view of its legislative history. Maybe we better amend that statute to make it practical.

I am here to help work the problem out rather than to find other problems.

Mr. **Ducheneaux.** I don't want to belabor this point, I think Mr. Taylor has a question.

Mr. **Barker.** Can I go back to this other one because this is more than either legal argument or anything else. It is a question that we have to, whatever we do, make it practical.

There is no use of putting something on the books that cannot work. The problem is, we will of course comply with the directives to the extent we are able, but the problem is that you want the tribes—at least I want the tribes—that are concerned and able to do something about this, to get the information properly and accurately.

I do not want to put in a requirement which will require people to do the impossible and, therefore, ignore it. I think that we all want to carry out the spirit of this notice and I am merely saying that as we do, let's face the reality of how do you identify the tribe of which a child is a member.

Mr. **Ducheneaux.** I understand that, and I appreciate that.

I want to move on to something else and perhaps there are other questions on this point. Since you are here, I want to take advantage of your expertise as an attorney who has worked many years in Indian affairs.

You brought up the question of the constitutionality of this bill and that of course was the major point advanced by the Justice Department.

With respect to two categories of people now—this is with respect to the notice requirements, jurisdiction requirements, transfer requirements—on category was the on-reservation member situation. The Justice Department clearly admits and recognizes that the Indian tribes have a right to jurisdiction over any placement or adoption of a child in that situation.

They go on to say with respect to the other two categories that is, the situation where there is a nonmember of the reservation—an Indian eligible for membership in the tribe but not a member on and off the reservation. They advance the proposition that to require the State courts to give notice to an Indian tribe of any action with respect to a child in that situation, or to provide for a transfer of that action to the tribal courts would be invidious discrimination and a denial of the equal protection of the laws.

I want to pursue that a little bit, not long, but for a short time. Is it your opinion that an Indian tribe independently of the natural parents of an Indian child, has a legitimate interest in that child if it is a member or eligible for membership in the tribe?

Mr. Barker. Let me speak this way, Mr. Ducheneaux.

I have not gone back to review the cases recently to speak to this and expect mainly by my reaction and tendencies based upon years of exposure to Indian law and the answer is this: I think they have a definite legitimate interest that needs to be considered and protected. I do not think though that that interest overrides and is superior to the right of the child and the parents.

I think the first protection has to be different even to the individual rights of the parents and family.

Mr. Ducheneaux. For the purpose of this, let's not bring in the issue of the parents.

I want to assume a situation.

Mr. Barker. I think the answer to your question then is yes, and I just wanted to say that properly qualified you would have no constitutional question there. This is a situation where the State court has involuntarily separated an Indian child from his parents.

Mr. Ducheneaux. Involuntarily?

Mr. Barker. Yes.

Mr. Ducheneaux. Does the tribe have a legitimate interest in the welfare and disposition of that Indian child who is either a member of or eligible to be a member in the tribe?

Mr. Barker. I think my answer would still be yes.

That is my reaction, yes.

Mr. Ducheneaux. In your mind, would it be an interest which is or could be independent of the interests of the parents?

Mr. Barker. Yes, qualified as I have said before, unless it is some way infringed upon the rights of the parents.

Mr. Ducheneaux. We are assuming an involuntary separation.

Mr. Barker. Yes.

Mr. Ducheneaux. If you destroy the children of the Indian tribe, you destroy the tribe.

Mr. Barker. I think that is sound.

Mr. Ducheneaux. That is obvious.

So, the tribe has a legitimate interest, and the United States has obligations through treaty, statute, et cetera, to preserve and protect the tribe.

Mr. Barker. Right, and preserve the public interest which is part of that.

Mr. Ducheneaux. The tribe.

Mr. Barker. Yes.

Mr. Ducheneaux. If you destroy the children of the Indian tribe, cases of *Wakefield* v. *Little*; *Hyde and Fisher* v. *District Court*, but, in view of the rationale of those cases and similar cases, does not the United States then have, under its trust responsibility and power of the Constitution, the power to affect the State courts' operation on Indian children of that nature?

Mr. **Barker.** I would think so. I certainly heard your discussion and read of the case this morning with the representative of the Department of Justice. It certainly seems to me that the language you quoted is directly on point.

I have not examined how broadly that has been examined in appeals, how many circuits subscribe to that viewpoint, but it seems to me that it has never been ruled contrariwise by any circuits or courts. So, I think that that is good law at this time.

Mr. **Ducheneaux.** Just to follow a little more: so there could be a compelling interest on the part of the United States to act to protect the continued viability of an Indian tribe by enacting legislation protecting the children of that tribe or those children eligible to be members of that tribe?

Mr. **Barker.** I would think that that is sound; yes.

Subject again to my limitations, so long as you are not infringing upon first the basic right of the individual and his family so that you would have a constitutional violation, I think the two are reconcilable.

Mr. **Ducheneaux.** Are there any questions?

Mr. **Jackson.** I had a question with respect to this problem of notice to the hypothetical families in Idaho, et cetera.

The minimum age requirement to be in the LDS program is 8 years; is that it? Eight to eighteen, I believe.

Mr. **Barker.** It would be 8 years, but they have to be 8 years of age for baptism, and they must be members of the church before they go. So, they cannot go under 8.

Mr. **Jackson.** Has there been any experience under this program that the children and their parents have themselves difficulty in identifying what tribe they consider to be members of?

It would seem if the parent and child know what band, say, on the youth's reservation they belong to, there would be no great problem in identifying which group would have to be notified.

Mr. **Barker.** My concern is that I am trying to protect against what is not the ordinary case, but the exception which would get us into litigation and testing the validity of the statute.

My answer as to the practical problem, as I have said, right now is that with 75 percent of our people, they are getting this information by a letter, and I think that in most instances, particularly in our work where we work mainly on regular existing Indian reservations, that there would not be much of a problem.

I think that as a practical matter it can work out. My concern is not to create a few situations that create impossibilities. I am telling you that the chairmen of the various Sioux groups, chairman of the Navajo group, and others, under this procedure I am talking about are finding it very workable because we have a continued working relationship with them with no problem.

Mr. **Jackson.** Perhaps some sort of excepting language along the lines of except where good evidence to the contrary can be shown that it is not possible to make notice in timely fashion as required by the act, something like that, would that possibly solve the problem?

Mr. **Barker.** It possibly could, and certainly I would tell you this, we would make every effort to do what we can, but I really, if I were to be called on some of the situations that I am familiar with and asked who to serve notice on, I would have a difficult time because some of these people do not consider themselves members of any particular tribe since they have long since been terminated and do not have a relationship.

I think the problem you have to guard against—not that it occurs in our program very often—but it is a conceivable thing to challenge validity.

Say you have a young woman and who moved away from her tribe a long, long time ago, and she has an illegitimate child. And she has never wanted the people at home to know about it. Then she gets into a point where she wants to place the child in some sort of placement thing, not to terminate her connection with it but to help her in her care and development of that child. She is raising it as hers and she wants to keep the relationship. She does not want the people back in Oklahoma where she came from to know about it. She would object to our sending a notice to the Kiowa tribe in Oklahoma, but she would want the child in the program.

That is the kind of a thing that I think raises technical objections. How many of those do we have? Very few, but that might be the one that would challenge the whole validity of the statute.

I think it is much better to realize the realities and to work around it than to write some arbitrary language and impose a burden that is impossible of meeting.

Mr. JACKSON. There is some amendatory language under discussion to provide a waiver in the case where the parent objected to such notification.

Mr. BARKER. That would provide or take care of that one.

On the question of notice to the tribe, certainly in all the big tribes, everybody that is in this room here today, there would be no problem. We would know where they were.

There is a difference between the federally recognized ones that we are dealing with and the number of actual Indian tribes is rather substantial as you know.

Mr. JACKSON. That is a difficult problem I guess.

Thank you.

Mr. DUCHENEAUX. Gunilla Foster.

Ms. FOSTER. I have seen your written testimony here.

The program is voluntary and all the children go to the places on a bus; is that right?

Is that the normal way?

Mr. BARKER. The usual thing, for example, if we are taking a group of people from Navajo, we will have an appointed day where all of the children and their families and their friends come together and we go in. All the work has been done and they get on the bus and they take them to the place where they will reside. Then, they have, through the social workers and ecclesiastical leaders, the families on the receiving end ready to take them, process them and receive them.

Ms. FOSTER. If somebody wants to join the program late, he is not able to do that then?

Mr. BARKER. That is the problem.

We gear it to a particular time so they can get into schools. You see how our biggest problem, and our purpose here is education. They have got to be at that home and settled and registered and ready to go to school on time because that is what they are coming for.

Ms. FOSTER. So, most of the time everybody goes at the same time?

Mr. **Barker**. Goes at the same time and usually go home at the same time.

Ms. **Foster**. If somebody wants to discontinue the program during the year, then, they can——

Mr. **Barker**. They can go home.

Ms. **Foster**. How do they get home?

Mr. **Barker**. They get home. It is arranged between the host family and the natural family with the church people seeing that it is taken care of and it is worked out.

Ms. **Foster**. At their expense, right?

Mr. **Barker**. No; often it is done at the expense of the host family or the church depending on the situation.

Ms. **Foster**. So, you are saying the majority of children travel at one time to the school so there is no reason why you would not be able to let the tribes know within 30 days that they have arrived?

Mr. **Barker**. In the first place, when you are dealing with 2,700 people, it takes a little while to get all the names and everything tabulated and double checked to be sure you are right. We get everything worked out on sheets and assignments.

We use the idea of 45 days just to be sure we can work within it and be sure we are accurate. As a practical matter, I would think on most occasions that would be adequate time.

Ms. **Foster**. Do you not know before you put the children on the bus who they are and who the parents are and where they are going or is this something you decide after they come to the school?

Mr. **Barker**. No; it is worked out before.

Ms. **Foster**. So, you would have a list before?

Mr. **Barker**. Often we have a few cases of where the Indian parents say, well, they do all the processing and at the last minute they say I don't think you should go. So, we don't have them all on our list, and then they come in at the last minute and say they would like to go, we have decided.

We figured out who will take care of the problem at home, we can handle it, et cetera. So, we need flexibility. Sometimes people are all set to go and something comes up at home, unexpected illness in the family, and they need them at home or something and they decide not to go.

So, we have to be flexible for the last minute adjustments.

Ms. **Foster**. I do not understand. When a mother or father put their child on that bus, do they know what family that child will stay with?

Mr. **Barker**. Usually.

Ms. **Foster**. They would have their address and phone number before they left?

Mr. **Barker**. Usually, but not always. Usually, yes.

In other words, they do not get into the problem of the suitability and the availability of the family they are going to reside with.

Mr. **Foster**. No.

Mr. **Barker**. That is really the question for the social workers and the local ecclesiastical people who know the families, whether they are able to take care of them and that they have the right attitude and ability and the right children in the family so that the Indian child would feel comfortable—that sort of thing has to be worked out.

Ms. **Foster**. OK.

Mr. BARKER. It is conceivable at the last minute something would come up that would make one family, host family better for this particular Indian child than another.

So, there might be one or two last minute changes. Usually, the planning and everything is all done in advance so that we know where they are going. So, 30–45 days lead time to check all the lists, very few, is what we are asking for, and it is worked out pretty well with the tribes we work with.

Ms. FOSTER. My concern is that, during the 30 days in which the tribe does not have notice, something major could have happened to the child's family at home, and if you do not have that list with which to communicate through the church and to the home, there is a very long time lapse there.

Mr. BARKER. As a practical matter, if something happens like that for example, Peter McDonald or somebody at Navajo would get on the phone and call the social service office in that same day, we would have a phone call back and working with them to work it out.

They know exactly where to go and who to call and that is the fastest way to do it. As a practical matter if something like that comes up, they call us, and we will break our backs to be sure that family's needs are taken care of.

Mr. DUCHENEAUX. Pete Taylor?

Mr. TAYLOR. I just have a few observations to make on your testimony.

I was concerned about your reference to imposing a burden on tribal courts under this bill.

As I read this bill—and I think probably you will agree—this bill is not transferring any jurisdiction to tribal courts which they do not already have unless they ask for a transfer out of a State court proceeding.

In addition, some tribes are authorized to come out from under Public Law 280 and establish courts of their own. Again, that would be a volunteer act on the part of that tribe.

So, I do not see this bill as resulting in some automatic addition of a massive caseload onto the tribal courts.

Mr. BARKER. On that I would just say that I have heard some tribal judges of our larger groups express great concern that people expect them to handle a case load and activities that they would not be able to handle with their existing funds and personnel.

I am just responding to that and I think that what you say is true. If they can't handle it, then they don't have to reach out and ask for the jurisdiction. There may be a little bit of a practical problem between what the political leaders of the tribe might think they can handle and what the courts can handle with their personnel funds.

Just like the Nation expects our courts to handle their litigation but the ninth circuit is 3 years behind. You argue a case in the ninth circuit and you can't possibly get a decision for 3 years. Something ought to be done about that and it is likely to happen in the tribal courts.

Mr. TAYLOR. Perhaps they should examine the tribal court structure where I think most cases are disposed of in 2 weeks.

Mr. BARKER. Yes; that is right.

Mr. TAYLOR. Another observation I had on this problem of the recommendation that the tribal chairman communicate with the church to find out about the placements is that the LDS program is not the only program that is operating on Indian reservations and I have no idea how many different programs may be operating.

If the burden is on the agency to notify the tribe, then the chairman has a way of keeping track of this. If the burden is on the chairman to write the different agencies, I do not know how he would ever find out which ones have been functioning in that area.

Mr. BARKER. I would say this is a two-edged sword, too.

It is a practical problem. If we get a small tribe, band or group that's organized they don't have a lot of staff and people to work on this type of problem and we would have to gear ourselves to the fact that they can only do so much follow-up and the church is aware of this.

If we could just some way work out an arrangement whereby we could get the responsible party on a current basis and not be expected to go beyond that, of course, we are willing to do this because we understand the problem is of the tribes, so that the tribe cannot be given an impossible burden but neither can the church organization.

Mr. TAYLOR. The third observation I would make, and it may be an area of some confusion, is that as I read S. 1214 as passed by the Senate, the executive officer of the tribe which was to be notified was the executive officer of the tribe occupying the reservation from which the child was being taken.

Mr. BARKER. Yes.

Mr. TAYLOR. It was not necessarily the tribal chairman of the tribe of which the child was a member.

Mr. BARKER. I understand.

Mr. TAYLOR. So that could be some difference in our thinking on that.

Mr. BARKER. If that is clarified, then—and if you are on a reservation, there is no problem of finding out, for example, who the chairman of the Navajo tribe is or who the chairman of your Wind River, two tribes, for example, up there, you could find out whether it should be Arapaho or Shoshone.

On some reservations you might have a number of tribes. I guess you could find out who to send it to, but it might be a problem where you have multipeople tribes on a reservation.

Mr. TAYLOR. When the case worker or recruiter or missionary is there, on the reservation, it certainly would be no different for him to go to the tribal headquarters or wherever and ascertain who the chairman of the tribe is. I would not think so.

Mr. BARKER. My point is that, to use two good examples, the Wind River Reservation, if you use the test of residing on Wind River Reservation, you have two very fine, strong tribes, the Arapaho and Shoshone; now which one do you want us to send it to?

Mr. TAYLOR. Both. [Laughter.]

It is a fair observation which reflects on this draft.

Mr. BARKER. It is a tough problem to work with, but I am sure we can find a solution.

Mr. DUCHENEAUX. Ms. Marks has a question.

Ms. MARKS. Just one quick one because I do not really understand procedure in one area of this whole thing.

It is my understanding that many States and county school systems, prior to enrolling a child in school, require some type of a legal document stating that the person enrolling that child has some type of legal responsibility for that child.

Is that generally always worked out previously so we are not dealing with any guardianship arrangements even on a temporary basis?

Mr. BARKER. Yes, Ms. Marks.

It is fully understood by the States in which these families are serving as host families. This arrangement is worked out and there is no legal guardianship. They fully understand that the Indian children are merely coming to reside in the home of the host family. They are coming there along with the other children from that home, but they belong, for example, at Navajo or they belong at Hopis or Fort Hall or someplace and they are members of the families of those reservations.

Ms. MARKS. The last quick question, you mentioned to Ms. Foster that all the children generally leave together.

Are they generally returned together at the same time? So in other words, if a child is not returned when at the end of the school year for some reason——the family wishes him to stay——what is the procedure?

Are you aware of these as the church is aware of these? Do they get special permission from church staff as well as the parents or does this become an interpersonal relationship between the two sets of parents?

Mr. BARKER. I am sure the program operates this way. We have a rule that a child must be returned and the only exception to that is if the natural parents request for some reason that they be retained—that is a very, very rare exception, about the only case I know of is where at home there was serious illness in the natural parents. One passed away and the other was very seriously ill and the father asked by letter if they could keep the child over the summer because he wanted to come back in the fall. This was taken up by the host parents with the church and they looked into it. They found it to be a genuine condition and approved it.

That would be a rare exception, but it is probably the only example I can think of where they would stay on.

Ms. MARKS. Thank you.

Mr. DUCHENEAUX. Thank you very much, Mr. Barker, we appreciate your testimony.

The Chairman has asked that the following correspondence be inserted in the record:

A letter from the late Gov. Wesley Bolin of Arizona in support of the bill with specific comments.

A mailgram from the Shoshone and Arapahoe tribes of Wind River Reservation in Wyoming.

Additional testimony by the Central Maine Indian Association.

Testimony from the Seattle Indian Center, Inc.

Also other letters from State officials commenting on the legislation.

[The additional material referred to may be found in the appendix.]

Mr. DUCHENEAUX. I think that concludes our hearing. The chairman normally indicates that the record will remain open for 10 days for any additional statements or testimony.

That will close the hearing.

Thank you very much.

[Whereupon, at 1:10 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Hearing Record

STATEMENT OF RICK LAVIS, DEPUTY ASSISTANT SECRETARY-INDIAN AFFAIRS (PROGRAM OPERATIONS) BEFORE THE HEARING OF THE SUBCOMMITTEE ON INDIAN AFFAIRS AND PUBLIC LANDS OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, U.S. HOUSE OF REPRESENTATIVES ON S. 1214, THE "INDIAN CHILD WELFARE ACT OF 1977", FEBRUARY 9, 1978.

Mr. Chairman, I appreciate the opportunity to appear before this Subcommittee today to present the Interior Department's testimony on S. 1214, "The Indian Child Welfare Act of 1977".

We agree that too often Indian children have been removed from their parents and placed in non-Indian homes and institutions. We also agree that the separation of an Indian child from his or her family can cause that child to lose his or her identity as an Indian and to lose a sense of self-esteem which can in turn lead to the high rates among Indian children of alcoholism, drug abuse, and suicide. However we do not believe that S. 1214, in its present form, is the vehicle through which the Congress should seek to remedy this situation. Therefore, the Administration opposes enactment of S. 1214 as passed by the Senate and we ask the Committee to defer consideration of the bill until such time as we have completed preparation of substitute legislation. We have already given the issue considerable thought and we hope to have our substitute ready for submission by early March.

Title I of S. 1214 would establish child placement jurisdictional lines and standards. Although Title I incorporates many child placement safeguard provisions that we believe are necessary, the administrative problems that would arise were that title in its present form to be enacted do not allow us to support it. If this bill is enacted, before any state court judge can proceed with a child placement, a determination must be made as to whether the child before the court is an Indian. The bill contains no definition of the term "Indian child". We are assuming, however, that an Indian child is a person under 18 who is an Indian, rather than a child of an Indian. To determine whether the child is an Indian, the judge must determine whether the child is a member of an Indian tribe (which we concede is not overly burdensome on the court) or whether the child is eligible for membership in an Indian tribe. The standards for membership in Indian tribes vary from tribe to tribe. Even if the court familiarizes itself with all these standards, it will also be necessary to examine the blood lines of the child.

Title I also is unclear in its use of the term "Child placement". A child placement, according to the definition in section 4(h) includes any private action under which the parental rights of the parents or the custodial rights of an extended family member are impaired. Does this include the case where the mother of an Indian child freely asks a relative to take over the care of her child? Shouldn't these be private actions not subject to invasion by outside parties? The definition of the term child placement remains unclear and the difficulty it has caused in discussion of this bill would be multiplied in the enforcement of the bill.

Another serious problem we have with Title I of the bill, is that the interest of the tribe seems to be paramount, followed by the interest of the biological parents of the Indian child. Nowhere is the best interest of the child used as a standard or even a consideration. Although the tribe is allowed to intervene in placements of children off the reservation as an interested party, nowhere is the child afforded the opportunity to be represented by counsel or even to be consulted as to where he or she wishes to be placed. Certainly an adolescent should have a right to have his or her preference seriously considered by the court, especially in the case where the child is not living on the reservation. The amount of notice that must be given before a child can be removed from the home also does not reflect the best interest of the child. Unless a determination is made that the "physical or emotional well-being of the child is immediately and seriously threatened", the parents must be given 30 days notice before a child can be removed. There are no provisions in the bill allowing this notice to be waived by the parents. Thus, even in the case where the parent consents to the placement, and perhaps even welcomes it, the proceeding can not begin until 30 days after notification of the parent.

We also recognize the potential this bill has of seriously invading the rights to privacy in the case of the parent of an off-reservation child who is the subject of a child placement. Under the provisions of section 102(c), if the state court determines that an Indian child living off the reservation has significant contacts with a tribe, that tribe must be notified of the proceeding, allowed to intervene as an interested party, and in some cases the proceeding must be transferred to the tribal court of that tribe. Thus, even in the case of an unwed Indian mother living in an urban setting far from the reservation who does not wish the members of the tribe to know she has had a child, the interests of the individual are overlooked in deference to the interests of the tribe. We are troubled by a requirement that (without regard to the consent of the parents) the child of one who has chosen a life away from the reservation must return to the reservation for a placement proceeding. Although these are just a few of many problems we believe the enactment of this bill would create, we do not mean to imply by this testimony that the special problems of Indian child welfare should be ignored. We simply believe that the bill, as it is written, is cumbersome, confusing, and often fails to take into consideration the best interests of the Indian child.

As regards to title II of the bill, we believe that it also needs to be rewritten. The Secretary of the Interior already possesses many of the authorities contained in title II. Our principal concern with the title, however, is that the Secretary of Interior would be granted certain authorities that are now vested in the Secretary of Health, Education, and Welfare. We are unclear which department would be required to provide what services; and we would be hesitant, without an increase in manpower and money, to assume responsibilities for providing services which are now being provided by the Department of HEW.

We have no objections to titles III and IV of the bill. We would suggest, however, that title III include the requirement that the Secretary of the Interior review the records compiled when preparing per capita judgement fund distribution roles to determine whether any of the placed children are entitled to share.

As I stated earlier, the Administration proposes to offer substitute language for the bill. We recognize the urgency of addressing the problems of Indian child welfare in a timely manner. Therefore, we hope to present our substitute to the Committee by early March.

This concludes my prepared statement. I will be glad to respond to any questions the Committee has.

STATEMENT

BY

DR. BLANDINA CARDENAS

COMMISSIONER, ADMINISTRATION FOR YOUTH AND FAMILIES

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS
AND PUBLIC LANDS

OF THE

COMMITTEE ON INTERIOR
AND INSULAR AFFAIRS

THURSDAY, FEBRUARY 9, 1978

Chairman Roncalio and Members of the Subcommittee, my name is Blandina Cardenas, and I am responsible for the Administration for Children, Youth and Families in the Department of Health, Education, and Welfare. I am particularly pleased to participate in your hearing this morning, because it touches on a subject about which I have strong feelings: namely the ability of our varied child welfare services to meet the needs of minority children. I know that much time and careful consideration has gone into the preparation of S. 1214. I am particularly grateful for the cooperative spirit in which staff of the relevant Subcommittees have worked with individuals at HEW. It has convinced me that however we might differ on details, we share the same goals. I am also appreciative of the fact that the Department has been invited to comment, even though HEW would not have primary responsibility for administering the provisions of this bill.

The legislation that is the subject of this morning's hearing has caused us to do some hard thinking about our role in relation to the child welfare services available for Indian children. I wish I could tell you that we have definitive answer to what that role should be. What I have to say instead is that we find ourselves in agreement about the goals and impressed by the thoughtful deliberation that has gone into S. 1214, but we have some questions about the approach represented by S. 1214 and are taking a close look at how we could make existing HEW programs more responsive to Indians. I realize that your hearings this morning reflect the Subcommittee's willingness to hear all sides, and I would hope that we could continue to work together to sort out these very difficult issues.

During the Senate Select Committee's hearing last August 4, the Department testified that provisions of the bill which would provide funds for Indian children in need of child welfare services and establish certain procedures in Indian child welfare proceedings before state courts and tribal courts, are goals worth attaining--especially in light of the detailed findings of a recent study conducted by authority of HEW on the state of Indian child welfare.

However, we were of the opinion at the time that the Administration's child welfare intiative, embodied in S. 1928, would be a more appropriate legislative vehicle for addressing the specific needs of Indian children. While the Department feels that more needs to be done to make child welfare services more adequately address the needs of Indian children, we continue to have great concern about the provisions contained in S. 1214.

The Department's previous testimony pointed out our commitment to determine the best way to optimize the impact of HEW programs for Indian people. That commitment continues to be firm.

The Department promised the members of the Select Committee on Indian Affairs that we would work to secure changes that would make H.R. 7200 more responsive to the special needs of Indian children. During the months after the hearings, the Department, with the assistance of the Committee's very able staff, fulfilled our promise to help secure meaningful changes to H.R. 7200. That bill which is now on the Senate calendar, contains two provisions that should have significant implications for Indian child welfare services. First, the bill provides that the decisions of Indian tribal courts on child custody matters be given full faith and credit by state courts. Secondly, the bill authorizes the Secretary of HEW, at his discretion, to make direct grants to Indian groups for the delivery of services to children and their families under Title IV-B of the Social Security Act.

While the Department continues to feel that the Administration's child welfare initiative, and specifically the two changes directly related to Indians, would improve the system of Indian child placements, we agree that more needs to be done.

We feel that the existence of legal and jurisdictional barriers to the delivery of services by state and county systems warrants a closer look at how these programs can become more responsive to Indians as well as other citizens, rather than creating programs that might duplicate existing authorities and have the potential of disrupting funds now provided to Indians under these and other HEW programs.

The National Tribal Chairman's Association and four other groups are now conducting a project to explore the desirability of amending the Social Security Act or alternative steps to more effectively provide social services for Indians. That project is being funded at more than a quarter of a million dollars, and will also draft a tentative implementation plan.

The 1974 hearings before the Senate Select Committee on Indian Affairs made us more cognizant of the special needs and problems of Indians in trying to maintain family and tribal ties for their children. The Department has responded to the need to increase the level of understanding and knowledge of Indian child welfare problems and has caused us to re-examine how we might more effectively channel assistance to tribal governments through its existing authorities.

Recently, the Department reported on a 2-year, State-of-the-Field survey of Indian Child Welfare services needs and service delivery. The survey examined the activities and policies of 21 States, and tried as well as to review the training and employment opportunities for Indian professionals in child welfare. The survey pointed to several of the factors that remain of concern to members of this Subcommittee as well as others interested in the field:

-- the need to support increased involvement by tribal governments and other Indian organizations in the planning and delivery of child welfare-related services;

-- the need to encourage States to deliver services to Indians without discrimination and with respect for tribal culture;

-- the need for trained Indian child welfare personnel;

-- the need to resolve jurisdictional confusion on terms that will eliminate both the most serious gaps in service and the conflicts between State, Federal, and tribal governments that leave too many children without needed care;

-- the need to assure that insensitivity to tribal customs and cultures is not permitted to result in practices where the delivery of services weaken rather than strengthen Indian family life.

At the same time, we are moving ahead with targeted efforts to assist tribes. We are providing technical assistance to aid the governing bodies of recognized Indian groups in the development and implementation of tribal codes and court procedures with relevance for child abuse and neglect. Under this 2-year project, training and technical assistance will be provided to from 10 to 20 Indian reservations.

Five projects are now being conducted to demonstrate methods by which Indian organizations could deliver social services to Indian children and families. Arrangements being tested include overcoming jurisdictional barriers to the provision of services under Title XX, such as purchase of service arrangements between State agencies and tribal groups.

Similar efforts will focus specifically on the delivery of child welfare services in P.L. 280 states, the design of day care standards appropriate to Indian children living on reservations, All of these activities, including those that are still being put into operation, are intended to reflect the Department's belief that Indian child welfare services must be based not only on the best interests of the child and support for the family unit -- however that may be defined -- but also on a recognition of the need to involve Indians themselves in the provision of services.

While the Department supports the goals of S. 1214, we have several concerns with the bill and oppose its enactment. We understand that the Department of the Interior is preparing a substitute bill, and we would like to continue to work with the Subcommittee in its development. First, the bill would seem to move in the direction of separate social services for Indians, on terms that may imply that State governments are no longer responsible for their Indian citizens. We are reluctant to tamper with the existing system in ways that run the risk of disrupting services now being provided to Indian children on and off reservations, or jeopardizing the full availability to Indian children of services intended for all children. While we do not believe it is the intent of this legislation, or of those who have worked so hard, it would be unfortunate if the adoption of this legislation should lead to a cut back in state services to which Indian families are now entitled. The Department is committed to assuring that funds now provided to the states for a variety of child welfare services are channelled to Indians on and off reservations.

A second concern of the Department is the need to assure that there is a match between the capability of Indian tribes and organizations to administer S. 1214, and the responsibilities they would assume. For example, the bill provides for the assumption of judicial responsibilities as well as the administration of social welfare agencies or "Indian Family Development Centers." Because of past and present practices, Indian tribes have had little opportunity to acquire expertise in the development and administration of social welfare programs. Many HEW funding sources, for example, are tied to the provision of specific services designated in legislation, and are not generally available for designing and developing new service delivery capabilities. While some of our developmental and demonstration authorities have been used for these purposes, we are not confident that there has been enough time for them to make the difference that a bill such as this would require.

A third concern of the Department is the likelihood that S. 1214 discriminate in an unconstitutional fashion against Indians living off the reservation, who are not members of a tribe, by restricting access to state courts in the adjudication of child welfare matters. Indians residing on reservations, who are members of the tribe, can come under the exclusive or concurrent jurisdiction of tribal authority. However, with respect to nonmembers and Indians living off the reservation, there is some question as to whether the tribal courts can exert jurisdiction over these persons. Section 102 (c) of the bill establishes procedures that courts must follow in considering cases involving Indian children who reside off the reservation. Indian tribes must be provided notice of the right to intervene in the proceeding, and are granted authority on a case-by-case basis to request the transfer of jurisdiction if they maintain tribal courts. Our concern is that parents, particularly those of mixed backgrounds who may have few tribal contacts, will be compelled to fight for the custody of their children in perhaps distant and unfamiliar surroundings. This could represent a heavy emotional burden on the parent or parents, and an economic one as well. And it would be detrimental to the child to require that he or she be placed in a tribal setting if his or her only home has been in an off-reservation setting.

In this as in any other program for which the federal government shares responsibility there will be a need for some mechanism to provide on-going evaluation. Such evaluation data should help us better judge how changes like those being proposed are working, and how, or whether, they might be modified in the future.

One final issue is of concern of the Department. We are concerned that the adoption process could be seriously effected by section 101(c), which permits final adoption decrees to be set aside at any time if it can be shown that the adoption did not comply with the requirements of the bill. The uncertainty that such a provision could create in the minds of persons wishing to adopt children might make them reluctant to become adoptive parents.

Mr. Chairman, we do wish to point out that the Department is supportive of Section 102(a) of the bill, which gives tribal courts jurisdiction over child placement matters affecting Indian children who reside on a reservation. However, we do not support Section 102(c), which extends this coverage to children who do not reside on a reservation. The Department is also generally supportive of the provisions that require that notice of a child placement proceeding in state courts be provided to the family and tribe of the child.

The Department feels that the goals of S. 1214 are laudable, but we continue to believe that we have an obligation to see them achieved within the framework of existing programs.

We realize that such a posture places major responsibility with us, to see that we are more effective in the administration of existing programs, and that services in fact serve Indian children and their families. We have been grateful for the cooperative spirit shown by the staffs of both the House and Senate Subcommittees in working with us as they developed this legislation. We hope that spirit of cooperation will continue--whether in the context of this legislation or existing programs--to ensure that the needs of Indian children and their families will indeed be met.

STATEMENT OF
THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION
BEFORE THE
HOUSE OF REPRESENTATIVES SUBCOMMITTEE
ON INDIAN AFFAIRS AND PUBLIC LANDS
S.1214, THE INDIAN CHILD WELFARE ACT

February 9, 1978

Mr. Chairman, I am Calvin Isaac, Tribal Chief of the Mississippi Band of Choctaw Indians and a member of the National Tribal Chairmen's Association. Thank you for asking NTCA to appear before you today.

I testified before the Senate Select Committee on Indian Affairs last year on the importance to the Indian tribal future of federal support for tribally-controlled educational programs and institutions. I do not wish to amend anything I said then, but I do want to say that the issue we address today is even more basic than education in many ways. If Indian communities continue to lose their children to the general society through adoptive and foster care placements at the alarming rates of the recent past, if Indian families continue to be disrespected and their parental capacities challenged by non-Indian social agencies as vigorously as they have in the past, then education, the tribe, Indian culture have little meaning or future. This is why NTCA supports S. 1214, the Indian Child Welfare Act.

Our concern is the threat to traditional Indian culture which lies in the incredibly insensitive and oftentimes hostile removal of Indian children from their homes and their placement in non-Indian settings under color of state and federal authority.

Individual child and parental rights are ignored, and tribal governments, which are legitimately interested in the welfare of their people, have little or no part in this shocking outflow of children.

The problem exists both among reservation Indians and Indians living off the reservation in urban communities: an inordinately high percentage of our Indian children are separated from their natural parents and placed in foster homes, adoptive homes, or various kinds of institutions, including boarding schools. The rate of separation is much higher among Indians than in non-Indian communities.

In 1976 Task Force Four of the Policy Review Commission reported Indian adoption and foster care placement statistics for 19 states. Of some 333,650 Indians in those states under the age of 21, 11,157, or at least one in every 30, were in adoptive homes. Another 6,700 were in foster care situations. Comparison of Indian adoption and foster placement rates with those of the non-Indian population for the same state invariably showed the Indian rate was higher, usually at least two to four times as high and sometimes 20 times higher. Where the statistics were available they showed that most of the adoptions and placements, sometimes 95 percent of them, were with non-Indian families.

One of the most serious failings of the present system is that Indian children are removed from the custody of their natural parents by nontribal government authorities who have no basis for intelligently evaluating the cultural and social premises underlying Indian home life and childrearing. Many of the individuals who decide the fate of our children are at best ignorant of our cultural values, and at worst contemptful of the Indian way and convinced that removal, usually to a non-Indian household or institution, can only benefit an Indian child. Removal is generally accomplished without notice to or consultation with responsible tribal authorities.

Often the situation which ultimately leads to the separation of the child from his family is either not harmful to the child, except from the ethnocentric viewpoint of one unfamiliar with the Indian community, or is one which could be remedied without breaking up the family. Unfortunately, removal from parental custody is seen as a simpl solution. Typically the parents do not understand the nature of the proceeding, and neither parents nor child are represented by counsel.

Not only is removal of an Indian child from parental custody not a simple solution, under present policies it is no solution at all. The effect of these practices can be devastating -- both for the child and his family, and in a broader sense, for the tribe. The child, taken from his native surroundings and placed in a foreign environment is in a very poor position to develop a healthy sense of identity either as an individual or as a member of a cultural group. The resultant loss of self-esteem only leads to a greater incidence of some of the most visible problems afflicting

Indian communities: drug abuse, alcoholism, crime, suicide. The experience often results, too, in a destruction of any feeling of self-worth of the parents, who are deemed unfit even to raise their own children. There is a feeling among professionals who have dealt with the problem that this sort of psychological damage may contribute to the incidence of alcohol abuse.

Culturally, the chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their People. Furthermore, these practices seriously undercut the tribes' ability to continue as self-governing communities. Probably in no area is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships.

The ultimate responsibility for child welfare rests with the parents and we would not support legislation which interfered with that basic relationship. What we are talking about here is the situation where government, primarily the state government has moved to intervene in family relationships. S. 1214 will put governmental responsibility for the welfare of our children where it belongs and where it can most effectively be exercised, that is, with the Indian tribes. NTCA believes that the emphasis of any federal child welfare program should be on the development of tribal alternatives to present practices of severing family and cultural relationships. The jurisdictional problems addressed by this bill are difficult and we think it wise to encourage the development of good working relationships in this area between the tribes and nontribal governments whether through legislation, regulation, or tribal action. We would not want to create a situation in which the anguish of children and parents are prolonged by jurisdictional fights. This is an area in which the child's welfare must be primary.

The proposed legislation provides for the determination of child placements by tribal courts where they exist and have jurisdiction. We would suggest, however, that section 101 of the bill be amended to provide specifically for retrocession at tribal option of any pre-existing tribal jurisdiction over child welfare and domestic relations which may have been granted the states under the authority of Public Law 280.

The bill would accord tribes certain rights to receive notice and to intervene in placement proceedings where the tribal court does not have jurisdiction or where there is no tribal court. We believe the tribe should receive notice in all such cases but where the child is neither a resident nor domiciliary of the reservation intervention should require the consent of the natural parents or the blood relative in whose custody the child has been left by the natural parents. It seems there is a great potential in the provisions of section 101(c) for infringing parental wishes and rights.

There will also be difficulty in determining the jurisdiction where the only ground is the child's eligibility for tribal membership. If this criterion is to be employed there should be a further required showing of close family ties to the reservation. We do not want to introduce needless uncertainty into legal proceedings in matters of domestic relations.

There are several points with regard to placement proceedings on which we would like to comment. Tribal law, custom, and values should be allowed to preempt state or federal standards where possible. Thus we underscore our support for the provision in section 104(d) that the section is not to apply where the tribe has enacted its own law governing private placements. Similarly, the provision in section 102(b) stating that the standards to be applied in any proceeding under the Act shall be the standards of the Indian community is important and should be clarified and strengthened. The determination of prevailing community standards can be made by a tribal court where the court has jurisdiction. Where the tribal court is not directly involved the bill should make clear that the tribe has the right as an intervenor to present evidence of community standards. For cases in which the tribe does not intervene reasonable provisions could be devised requiring a nontribal court to certify questions of community standards to tribal courts or other institutions for their determination.

The presumption that parental consent to adoption is involuntary if given within 90 days of the birth of the child should be modified to provide an exception in the case of rape, incest, or illegitimacy. There appears to be no good reason to prolong the mother's trauma in such situations.

Section 103 establishes child placement preferences for nontribal agencies. Most importantly, the bill permits the tribe to modify the order of preference or add or delete categories. We believe the tribes should also be able to amend the language of the existing preferences as written. The bill should state more clearly that nontribal agencies are obliged to apply the tribally-determined preferences.

The references in section 103 to "extended Indian family" should be amended to delete the word "Indian." The scope of the extended family should be determined in accord with tribal custom but placement should not be limited only to Indian relatives.

[illegible]

S. 1214 provides that upon reaching the age of eighteen an Indian adoptive child shall have the right to know the names and last known address of his parents and siblings who have reached the age of eighteen and their tribal affiliation. The bill also gives the child the right to learn the grounds for severance of his or her family relations. This provision should be deleted. There is no good cause to be served by revealing to an adoptive child the grounds for the severance of the family relationship and it is bad social practice. This revelation could lead to possible violence, legal action, and traumatic experiences for both the adoptive child and his adoptive and natural family. Further we do not believe it is good practice to give the adoptive child the right to learn the identity of siblings. This could result in unwarranted intrustion upon their rights and disruption of established social situations. In general, we recommend that the rights provided in section 104 not be granted absolutely, but rather that individual tribes be permitted to legislate on this question in accord with their custom.

Procedurally, the bill should be amended to make clear that children and parents appearing in tribal court shall have the right to representation by professional counsel as well as lay advocates, if the tribal court permits the appearance of professional as opposed to lay counsel in other proceedings. Finally, we strongly support the full faith and credit provisions of section 105 as a much needed step in the development of orderly tribal judicial process.

Title II of S. 1214 contains a welcome positive approach to child welfare problems. Resolution of jurisdictional questions as provided in Title I is a small part of the problem compared to the challenge of combatting poverty, substandard, overcrowded housing, child abuse, alcoholism, and mental illness on the reservation. These are the forces which destroy our families. With regard to the creation of family development programs and centers, however, we believe the bill is unduly restrictive. Tribes need not be authorized t create these programs. They should be regarded as eligible recipients or contractors for these programs. Section 202, authorizing these family programs should be more flexible, specifying that tribes are not limited by the terms of the statute but that other family development proposals may be funded at the discretion of the Secretary. The bill should expressly provide for planning of these family programs. Off-reservation programs (Sec. 203(d)) should specifically include counseling for adoptive or foster parents as well as the children and families facing disintegration.

We would delete paragraph 8 of section 202(a) providing for subsidization of adoptive children. We feel this would tend to undercut the parental responsibility necessary to the adoptive relationship and would provide an ill-advised incentive to adoption. We suggest that if the provision is to be retained it should apply to exceptional cases involving difficult placement such as unusual medical care or educational requirements.

We are opposed to the provisions of Section 204 of the bill mandating a Secretarial study of all Indian child placements for the last sixteen years with the potential for initiation, with parental consent, of legal proceedings to restore custody of the child to the natural parent. We are sure that many placements in the past have been technically defective or even morally wrong but the illegality of a placement ten, twelve, or fourteen years ago does not necessarily mean present family relationships must be dismantled. As sad as past practices may have been a Secretarial probe of the kind described is not wise. We should look to the future. At the very least, a study of this kind should be limited to the very recent past. The record-keeping requirements imposed upon the Secretary also give us some cause for concern for the same reasons. The stated purposes for which the information could be released to adoptive children or parents are reasonable, but we see the potential for abuse in wrongful application of the information. We think it best to release to parties only the identification of the court having jursidiction. It would then be up to the court to make the information available under the provisions of section 104, as modified in accord with our earlier suggestions.

Mr. Chairman, this concludes our testimony. We support S. 1214 as being responsive to a critical problem and we look forward to progress in protecting and strengthening Indian families.

Thank you for inviting us to present our views.

EDWARD DRIVING HAWK
President

NARCISSE BRAVE
Vice President

Rosebud Sioux Tribe
Rosebud Indian Reservation
South Dakota
Incorporated Under Act of June 18, 1934, 48 Stat.—984
PHONE: 605-747-2381

JOHN KING, Jr.
Secretary

PHILLIP D. AMIOTTE
Treasurer

February 9, 1978

Teno Roncalio, Chairman
Sen. Select Sub-Comm. on Indian Affairs
Room 1324 Longworth
Washington, DC

Dear Chairman and Members:

Attached is a summary of the Rosebud Sioux Tribe's reaction to Senate Bill S. 1214, The Indian Child Welfare Act of 1977.

The following pages will constitute our testimony to be delivered to the Senate Select Sub-Committee on Indian Affairs. In essence, our testimony conveys the Rosebud Sioux Tribe's endorsement of Senate Bill S. 1214.

Sincerely,

Mona Shepherd

Mona Shepherd, Coordinator
RST Social Services
Rosebud Sioux Tribe
Box 148
Mission, South Dakota 57555

MS:fb
enc.

TESTIMONY BEFORE THE SENATE SELECT SUB-COMMITTEE ON INDIAN AFFAIRS

February 9, 1978
MONA SHEPHERD, COORDINATOR, RST SOCIAL SERVICES PROGRAM, ROSEBUD SIOUX TRIBE, ROSEBUD, SOUTH DAKOTA

Teno Roncalio, Chairman
Senate Select Sub-Committee on Indian Affairs
Room 1324 Longworth
Washington, DC

Dear Chairman and Members:

The Administrative body of the Rosebud Sioux Tribe, Rosebud, South Dakota has reviewed Senate Bill S. 1214, The Indian Child Welfare Act of 1977, and as designated representatives of our Tribe, we are here to state that the Rosebud Sioux Tribe gives its full support and approval of the contents of S. 1214.

The provisions of the Act pertaining to the transfer of cases from State to Tribal Courts is of special interest to our Tribe at this particular time. We are currently involved in a battle with the State of South Dakota which refuses financial assistance for the provision of services to "adjudicated" Indian Welfare youth. State and Tribal Courts in South Dakota differ in their legal interpretations of the term "adjudicated" youths and the conflict that has arisen has resulted in the lack of much needed services being provided to a number of our young Indian Welfare recipients. Should Senate Bill S. 1214 become law, conflicts in State and Tribal legal interpretations would be less evident because Tribal legal interpretations would be the only interpretations the Tribes need concern themselves with. The time wasted in battling with State Courts only creates additional hardships *for our young people. In addition, the fact that Tribal Courts (through Senate Bill S. 1214) would have jurisdiction over the placement of Indian children would mean that parents and extended families of the children involved would have their rights more clearly recognized and enforced. Often parents or extended family members are not fully aware of their rights or the court procedures and their meansing and this often results in Indian children being placed in foster or non-Indian adoptive homes which is not the Tribe's ultimate goal.*

In addressing Title II of Senate Bill S. 1214, the fact that grants could be directly awarded to Tribal entities would alleviate unnecessary paperwork and bureaucratic delays in providing much needed services to Indian children and their families. We are extremely apprehensive about the "State" or the Bureau of Indian Affairs having any control over family development programs for it has been our experience that such funding can be "frozen" by these agencies which leaves the Rosebud Sioux Tribe will no alternative course for funding. When this occurs, we find ourselves once again, engangled in financial battles with the "State" or the BIA Area Offices which only clouds the real issue of provision of services. Direct funding to the Tribes would also give those Tribal offices in charge of family development programs a clear view of the funds available to work with and would enable them to make more accurate projections for future financial projects.

Title III which provides alternative measures to ensure that Indian children placed in non-Indian foster or adoptive homes are informed of their Tribal rights is a vital concern of the Rosebud Sioux Tribe. Not only can enrollment become a problem for these individuals but when probating Indian estates, heirs who are children adopted by non-Indian families cannot be traced due to the fact that State agencies will not release information as to their whereabouts nor will they release name changes resulting from such adoptions. The fact that the Secretary of Interior can intervene in such matters gives added assurance to these individuals that their full Tribal rights and benefits will be granted to them.

Title IV which pertains to the study of day school facilities such as Bureau of Indian Affairs Boarding Schools is a long-awaited action. Many of our Indian people have experienced living in these educational institutions and although many needed changes have occurred, there must be alternative education measures created. The study of current problems and situations in boarding schools will enable Tribal administrative bodies to seek out alternative educational programs and to make adequate financial projections for funding such alternative measures.

In summary, we of the Rosebud Sioux Tribe, fully endorse proposed Senate Bill S. 1214 and feel that its structure and purpose will enable the Indian tribes to overcome many stumbling blocks which have for too long hindered the provision of necessary services to our Indian children. The Rosebud Sioux Tribe sincerely hopes that this proposed legislation will soon become en-acted into law.

Puyallup Tribe of Indians
MEDICINE CREEK TREATY NATION

TESTIMONY S - 1214

By Faye La Pointe

Puyallup Tribe

March 9, 1978

Mr. Chairman, members of the committee, my name is Faye La Pointe. I am Social Service Director for the Puyallup Tribe, Washington State. I appreciate this opportunity to testify on S. 1214.

Tribal Council
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DONALD MATHESON
Vice Chairperson
MAISELLE BRIDGES
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BERTHA TURNIPSEED
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Secretary
DOLORES BLEVINS
Treasurer

The Puyallup Tribe has been extremely active in the provision of social service to the Indian population on and adjacent to the reservation for many years. In our testimony last month we provided this committee with information about the existing social service programs and spoke of the desperate need for additional services.

Indian child welfare is a priority. We have been shocked and dismayed by paternalistic attitudes of non-Indian agencies i.e. state department of social and health services, various religious denominations and publicly elected officials when issues relating to Indian children are discussed.

The Puyallup Tribe along with Indian tribes are aware of the damaging effects such attitudes have had on Indian people all over the United States.

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Catholic Social Services questions Indian Tribes ability to handle confidential matters related to adoption of Indian children. They further question tribes ability to develop, recruit and license Indian foster/adoptive homes.

The Morman church has deemed it necessary to develop the LDS program which is disguised as an educational program. The program has been responsible for removing Indian children from their homes and families for months or years at a time.

We know that most of our people have been baptized into Christianity and have been exposed to some type of Christian training. Christianity strictly prohibits childbirth out of wedlock; however, it has been unable to prevent it. An Indian person who has been trained in Christianity will still feel the stigmatism of SIN. This is the reason unwed mothers feel they must seek outside help and the need to relinquish their rights to the child. The young mother who successfully gives up her child and returns to the Indian community will face the cultural values of her people. More often than not this person suffers shame and humiliation and is well on her way to self destruction, lost forever to all people.

The extended family still exists in Indian country, it means living together, loving together, crying together, sharing all things and never having to worry about being alone.

It is not a religion, not a law, not a mandate. "It is a way of life." A child is a gift from the Creator. It is to be loved by all and will bring the joy that only a child can provide to the whole family.

Community based educational facilities are desperately need on reservations. The Puyallup Tribe has established a model school system. We invite LDS representatives to tour our facility so that they may learn how to assist Indian people in acquiring a formal education. The answer is not in the removal of children. It is in supporting us in helping ourselves.

Many of us have managed to remain Christians in spite of human errors of lay people. Traditional religion combined with Christianity. There is only one Creator.

S-1214 will appropriate $26,000.000.00 nationally. With all due respect, this figure is unrealistic. Puyallup Tribe's portion would be about $80,000.00. This would not even cover necessary staffing, equipment, supplies, and travel for a Child Placement Agency. Additional funds must be sought.

In 1977, we suggested that Indian Health Service be the conduit for the Indian Child Welfare funds. I would like to reinforce that idea today. Indian Health Service has been the most active Federal Agency involved in Indian Child Welfare in our area.They have been providing mental health services to children and families who habe been separated through various court systems. They recognize that these actions are extremely detrimental to the mental well being of the total Indian Community.

Indian children represent our future. We urge this committee again to protect the rights of our future. We have a history that goes back long before the coming of the white man. We have traditions that still live today. Our children will again walk with pride. At some point in time we (all people) will be able to communicate. Then we will be able to share the beautiful part of us that so many of you have been trying to understand..

S 1214 has come a long way. The Puyallup Tribe has actively participated in its growth. We support the bill and urge this committee's support. Thank you.

STATEMENT OF BOBBY GEORGE
Director, Division of Social Welfare
The Navajo Nation
on S. 1214, Indian Child Welfare Act
before the
Subcommittee on Indian Affairs and Public Lands

February 9, 1978

Distinguished Congressmen, staff, and visitors:

Thank you very much for this opportunity to express the concerns of the Navajo Nation on the proposed Indian Child Welfare Act.

We firmly support the intentions of the bill. The attempt of Congress to take steps to correct past and current abuses of Indian family's rights in child welfare matters is needed and admirable. Indeed, our history is filled with overzealous acts by states and other non-tribal agencies who unjustly take many Navajo children away from their homes and place them in foreign and hostile environments somewhere off-reservation. However, another principle is involved here.

This is the principle of Indian sovereignty. It is our contention and the contention of the American Indian Policy Review Commission that Indian tribes are sovereign and our relationship to the United States government is one of equals. Thus, we must be concerned about the scope of federal intervention into our domestic affairs.

We request that a provision be added which makes it unquestionably clear that we retain our sovereign rights to adopt our own laws and handle child custody matters in our ways. This will insure that our traditional values, customs, and practices are honored. For over twnety years now our Tribal Council has had the policy of requiring any placement of Navajo children be done only with the consent of our tribal courts. At a minimum, we suggest that tribal participation in the Act be made optional.

It is easy to see that the bill will prove a tremendous help to those tribes bound to Public Law 83-280 provisions. However, for our Tribe, we believe we presently possess the capability to exercise responsible authority in Navajo child custody proceedings. We have a tribal code with a juvenile section and a large social services agency.

We welcome the Congress's attempt, however, to regulate the Indian child placement activities of states and non-tribal agencies. A clear definition of the role and range of state and other agency's involvement in this is drastically needed. Perhaps the bill could more directly address this area.

We also welcome the Title II section of the bill. Our foremost concern, however, is that the amount of funds being authorized is simply far short of the real need. We ask the Committee to seriously address this area and authorize full funding.

Also, concerning the declaration of policy section, we again request the Committee to recognize the tribe's rights to self-determination. In this policy section language should be added to make this perfectly clear.

Again, thank you for this opportunity to present our views. We plan to submit a detailed and comprehensive statement on the bill in a matter of days.

TACOMA INDIAN CENTER, INC.
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Bill Flores

TESTIMONY - CONGRESSIONAL COMMITTEE
S. 1214

Statement of Vera Harris - Director of the Teapah (Grandfather) Child placement/protection agency of the Tacoma Indian Center

and Elisabeth Cagey Administrative Assistant Caseworker/ Legal Coordinator

CONGRESSPERSONS - We respectfully submit the following recommendations for rewording or change of areas of this much needed legislation, as the current wording will cause great hardship and misunderstanding when implementation becomes a reality.

DEFINITIONS

(i) Parent (must be revised to include only Indian Adoptive parents) In one particularly horrible case, the adopted Indian girl was raised to believe all Indians are ugly and worthless. At the age of 14 she mothered a new son. This young Flathead woman is now in a Washington State Institution attempting suicide and classified as chronically alcoholic. The non-Indian adoptive parents under Washington State law have been allowed to throw her away and keep her child. They have all of the rights of natural grandparents and no efforts of tribal or urban Indian agencies have had an effect on his continueing placement in this destructive family unit.

The young woman has "legal" custody, but believes she is bad, and if the child remains in the home, they may love her again.......

SEC. 101. (C) Temporary Placements can/should be allowed if certified by a authorized agent of a tribal court. Voluntary consent is often an emergency for medical treatment, or a mental health crisis.

Case A
A young woman appears in a hospital emergency ward with her tiny 2 year old and 4 year old children. She has brought her childrens clothing with them. She is in labor and has no help at home. There are no responsibile adults available. She has no time to go to a tribal court, the attendance at the hospital take care of her children until a Teapah (or Tribal) caseworker arrives and the consent form is later signed authorizing emergency placement.

Case B
A singleton parent (a young woman) goes into the Indian Community Clinic for a routine medical appointment. She has left her 4 children

with a neighbor "for a couple of hours". An hour and a half later she is in a local hospital awaiting surgery. Her children range from 15 months to 4 years of age. Before she left the clinic, she requested a voluntary consent form for placement of her children and left emergency instructions on how to find her children and a few of their belongings. Without the mechanism for immediate assistance she would have had one more set of problems to deal with, and our foster licensed homes would have both been in violation of the law, and denied payment.

SEC. 102. (h)

This series of exceptions must only apply to juveniles 16 and older, or not to remain off reservation for over 90 days. The Tribes must recieve notice 15 days prior to transport of child, the nearset reservation/urban child welfare program must be contacted in advance for the purpose of coordinating support services.

Example:
Jesus Christ Church of Latter Day Saints has included in it's program children in the 5-7 age grouping and many of these children spend several years off reservation. Some children are so acclaimated into these placements that they are in effect "adopted". Community alternatives could/would be adopted or developed to these out of community placements if adequate dollars were available for Tribal (community) services.

Bureau and denominational (primarily Catholic) boarding schools are able to recruit children (seperating family units) because of the racism of local school districts, and a lack of reservation (community) supports.

SEC. 102. (i)

Except cases where temporary wardships have been filed with State courts and tribes wish to assume those wardships.

On some reservations all families who have been on public assistance have been forced to agree to state wardships for their children before securing basic life support. The new wording could be interpreted to mean a previous wardship, however secured would constitute authority to continue with placements, or adoptive plans.

and......cases where Tribes have Tribal registers of adoptive parents and the State Courts (agencies) are anticipating adoption without regard or respect for these Tribal resources.

Foster home recruitment by Indian agencies has been successful, but most of these families will not register with State agencies. We believe the same is/and will be true of adoption registers. The State agencies are being allowed to say they have searched the State registers and their non-Indian placements are legal because our families haven't placed their names on these registers.

Washington State has passed recent legislation but the effect is simply new boards forming, and the State hiding behind confidentiality laws withholding information from those boards, and using their registers to withhold custody.

S. 1214 ---3---

Sec. 202. (B) (6)

funding must be included to meet the needs of........

Transportation, emergency custody, and communication assistance for both Urban and Reservation programs to provide emergency and scheduled supervision and care of children "going home" to (another) Tribal jurisdiction.

> This bill calls for extensive referrals of Indian children to their primary governmental jurisdiction, but does not cover the costs of phone calls, office and casework support, crisis or scheduled care, transportation and supervision, etc..
>
> THERE IS NO MECHANISM PROVIDED FOR URBAN PROGRAMS OR TRIBAL PROGRAMS TO "SIT IN" ON STATE COURT PROCEEDINGS FOR THE PURPOSE OF MONITORING OR FORCING THE IMPLEMENTATION OF THESE NEW LAWS. WITH ANY CHILD IN A CURRENT WARDSHIP STATUS THE DOORS WILL BE CLOSED IN THE NAME OF CONFIDENTIALITY AND WE WILL FIND OURSELVES TOTALLY HELPLESS TO PROVIDE PROTECTION TO OUR CHILDREN, OR SERVICES FOR RETURNING THEM TO THEIR RESERVATIONS IF CUSTODY IS SECURED.

SEC. 203. (A) The Office of child development and the Social Rehabilitative Services agencies of H.E.W. Region 10 have been indifferent and unhelpful. The only helpful agency has been H.E.W. Indian Health - mental health services - specifically John Bopp M.S.W.. Serious consideration should be given to keeping these funds within the Indian Health agency under 638 with the headquarters (Rockville) Administrative management working with both Tribes and Urban Centers.

SEC. 301. (a) Confidentiality CAN NOT AND MUST NOT apply to Tribal Governments, Courts, or Social Work Agencies. The Bureau as the rights protection trustee should have prevented the alienation of Indian children all along and should not now be controling files needed by these tribal agencies. There is no posibility of Urban Indian social work agencies doing their work in conjunction with the Bureau of Indian Affairs. Many of these lost children are second generation Bureau of Indian Affairs relocation program victims and the Bureau is very defensive of this program.

Department of Justice

STATEMENT

OF

LARRY L. SIMMS
ATTORNEY/ADVISOR
OFFICE OF LEGAL COUNSEL

BEFORE

THE

SUBCOMMITTEE ON INDIAN AFFAIRS AND PUBLIC LANDS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

S. 1214 -- PLACEMENT OF INDIAN CHILDREN IN ADOPTIVE HOMES

ON

MARCH 9, 1978

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you this morning to present the views of the Department of Justice on the constitutionality of this bill, which deals generally with the placement of Indian children in foster and adoptive homes.

The Department of Justice has expressed its views on this bill in a letter prepared by the Office of Legal Counsel and transmitted to Chairman Udall on February 9, 1978, which is attached to this statement. I would request that this letter be accepted as part of my statement today.

For our purposes this morning, I would like briefly to summarize the analysis and conclusions in the February 9 letter. The feature of this bill which raises constitutional doubts is its provision which would permit Indian tribal courts to adjudicate child custody and other family relations matters even though the parents or guardians of the child involved might desire to have such matters adjudicated in a state court which otherwise would have at least concurrent jurisdiction over such matters.

The constitutional question presented involves the potential for invidious discrimination created by S. 1214 which may be prohibited by the Fifth Amendment. In analytical terms, the bill would appear to create certain classes of parents and guardians who would lose an existing right to have certain family relations matters adjudicated in state court solely on the basis of a certain percentage of Indian blood in their child. As the February 9 letter points out, for two of these classes -- parents living on and off reservations who are not members of the tribe asserting jurisdiction -- the denial of a right of access to state court could be based solely on the amount of Indian blood in the child involved. In other words, two sets of parents might be similarly situated in all respects except that the child of one set might have the amount of Indian blood required under this bill to be "eligible" for tribal membership and to trigger tribal jurisdiction and the other child would have less than that required for "eligibility." The result of S. 1214 would be that the former parents would be denied access to state courts whereas the latter would have access to state court.

As the February 9 letter also points out, the Supreme Court has never decided whether the kind of classifications drawn by this agst parent, not child

bill -- based solely on racial characteristics -- would constitute invidious discrimination. Indeed, the analogous cases recently decided by the Court -- Morton v. Mancari, Fisher v. District Court and United States v. Antelope -- all involved situations in which the persons claiming to have been discriminated against were members of Indian tribes.

Mancari, Fisher and Antelope clearly establish that Congress may constitutionally classify and treat differently than non-members persons who are members of Indian tribes. Thus, this bill as applied to family relations matters of voluntary tribal members is, in our opinion, constitutional. Those same cases, however, do not support the different treatment which would be accorded to parents or guardians by this bill whose children are "eligible" for tribal membership but whose parents or guardians have, for whatever reasons, declined tribal membership or who themselves may not even be eligible for tribal membership.

I would emphasize here that we are not talking about discrimination against the child involved; rather, we are talking about discrimination against the parents or guardians, living on or off a reservation, who themselves may not even be eligible for tribal membership.

Our reading of these recent cases indicates to us that the courts would apply a stricter standard of review to the classifications drawn in this bill than has been applied to classifications based on tribal membership. To survive constitutional scrutiny, it is our view that a compelling governmental interest would have to be shown to justify denying parents and guardians who are not tribal members access to the state courts. It is also our view that no such compelling interest has been demonstrated with regard to this bill.

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

FEB 9 1978

Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is to bring to your attention several areas where the Department of Justice perceives potential problems with S. 1214, a bill "To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes". In our view, certain provisions of the bill raise serious constitutional problems because they provide for differing treatment of certain classes of persons based solely on race. S. 1214 was passed by the Senate on November 4, 1977 and is now pending in the Interior and Insular Affairs Subcommittee on Indian Affairs and Public Lands.

This Department has not been involved in the hearings relating to the bill. Our comments therefore are based on a reading of the text of the bill rather than on a review of the testimony and legislative history which necessarily would be considered by a court which had to interpret its provisions and determine its constitutional validity.

As you may be aware, the courts have consistently recognized that tribal governments have exclusive jurisdiction over the domestic relationships of tribal members located on reservations, unless a state has assumed concurrent jurisdiction pursuant to federal legislation such as P.L. 83-280. It is our understanding that this legal principle is often ignored by local welfare organizations and foster homes in cases where they believe Indian children have been neglected, and that S. 1214 is designed to remedy this, and to define the Indian rights in such cases.

The bill would appear to subject family relations matters of certain classes of persons to the jurisdiction of tribal courts which are presently adjudicated in state courts. The bill would accomplish this result with regard to three distinct categories of persons, all possessing the common trait of having enough Indian blood to qualify for membership in a tribe. One class would be members of a tribe. Another class would be non-tribal members living on reservations, and a third would be non-members living off reservations. These three classes would be denied access to state courts for the adjudication of certain family relations matters unless "good cause" is shown under §102(c) of the bill.

The general constitutional question raised by S. 1214 is whether the denial of access to state courts constitutes invidious racial discrimination violative of the Fifth Amendment. See Bowling v. Sharp, 347 U.S. 497 (1954). This question is most properly addressed by focusing on each of the three classes described above and contrasting each class with a similarly situated class of persons whose access to state courts is not affected by the bill.

The class of persons whose rights under the bill may, in our opinion, constitutionally be circumscribed by this legislation are the members of a tribe, whether living on or near a reservation. In Fisher v. District Court, 424 U.S. 382 (1976), the Supreme Court addressed an argument made by members of the Northern Cheyenne Tribe that denial to them of access to the Montana state courts to pursue an adoption did not involve impermissible racial discrimination. In that case, both the persons seeking to pursue adoption of the child in question and the natural mother of the child who contested the right of the Montana courts to entertain the adoption proceeding were residents of the reservation and members of the Tribe. The Court stated that:

> "The exclusive jurisdiction of the Tribal Court does not derive from the race of the plaintiff but rather from the quasi-sovereign status of the Northern Cheyenne Tribe under federal law. Moreover, even if a jurisdictional holding occasionally results in denying an Indian plaintiff a forum to which a non-Indian has access, such disparate treatment of the Indian is justified because it is intended to benefit the class of which he is a member by furthering the congressional policy of Indian self-government. Morton v. Mancari, 417 U.S. 535, 551-555 (1974)." 424 U.S., at 390-91.

In Fisher, the class to which the Court was apparently referring consisted of members of the Northern Cheyenne Tribe. This is so because of the Court's citation to Morton v. Mancari, in which the Court had upheld preferential treatment of Indians in certain employment situations by reasoning that the "preference, as applied, is granted to Indians not as a discrete racial group, but rather, as members of quasi-sovereign tribal entities . . . ." 417 U.S., at 554.

More recently, the Court has reentered this thicket in United States v. Antelope, 45 U.S.L.W. 4361 (U. S. April 19, 1977). In that case, enrolled Coeur d'Alese Indians contended that their federal convictions for murder of a non-Indian on the Coeur d'Alese Reservations were products of invidious racial discrimination because a non-Indian participating in the same crime would have been tried in state court and would have had certain substantial advantages regarding the elements required to be proved for conviction.1/ The Court, in rejecting this claim, held that the Coeur d' Alese Indians "were not subjected to federal criminal jurisdiction [under 18 U.S.C. §1153] because they are of the Indian race but because they were enrolled members of the Coeur d'Alese Tribe." Id., at 4363.

We believe that Mancari, Fisher and Antelope directly support the constitutionality of this bill as it affects the access of tribal members to state courts. At the same time, these cases do not resolve the constitutionality of S. 1214 as it would affect the rights of non-tribal members living either on or off reservations. Indeed, they can be read to suggest that, absent tribal membership, Congress' freedom to treat differently persons having Indian blood is diminished.

With regard to non-members living on a reservation, a footnote in the Antelope case would appear indirectly to address, but not resolve, the question presented by this bill:

> "It should be noted, however, that enrollment in an official Tribe has

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1/ Specifically, the State of Idaho, in which the crime occurred, did not have a felony murder rule so that, in order to be convicted of first degree murder, the State would have had to prove certain elements that were not required to be proven in the federal trial because a felony-murder rule was in effect in the latter court.

> not been held to be an absolute requirement for federal jurisdiction, at least where the Indian defendant lived on the reservation and 'maintained tribal relations with the Indians thereon.' Ex Parte Pero, 99 F. 2d 28, 30 (CA 7 1938). See also United States v. Ives, 504 F. 2d 935, 953 (CA 9 1974) (dicta). Since respondents are enrolled tribal members, we are not called on to decide whether nonenrolled Indians are subject to [federal criminal jursidiction] and we therefore intimate no views on the matter." 2/

In Ex parte Pero, supra, the Seventh Circuit affirmed the grant of a writ of habeas corpus to a non-enrolled Indian, who had been convicted of murder in a state court, holding that the Indian could only be tried in federal court by virtue of what was then 18 U.S.C. §548, the predecessor of 18 U.S.C. §1153. The court appeared to base its holding on the fact that the Indian was the "child of one Indian mother and half-blood father, where both parents are recognized as Indians and maintain tribal relations, who himself lives on the reservation and maintains tribal relations and is recognized as an Indian . . . ." Id., at 31.

With regard to non-members who are otherwise eligible for tribal membership who live on reservations, Pero at least stands for the proposition that the federal interest in the "guardian-ward relationship" is sufficient to secure to a non-enrolled Indian the protection of a federal criminal proceeding as opposed to trial by a state court. Pero is, however, predicated on a federal interest which would appear to us to differ in kind from the federal interest identified in Mancari, Fisher and Antelope. In those latter cases, the federal interest in promoting Indian self-government was specifically identified as a touchstone of the Court's opinions. In our view, this weighty interest is present in S. 1214 in a more attenuated form with regard to non-tribal members, even those living on reservations. An eligible

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2/ 45 U.S.L.W., at 4363 n.7.

Indian who has chosen, for whatever reasons, not to enroll in a tribe would be in a position to argue that depriving him of access to the state courts on matters related to family life would be invidious. Such an Indian presumably has, under the First Amendment, the same right of association as do all citizens, and indeed would appear to be in no different situation from a non-Indian living on a reservation who, under S. 1214, would have access to state courts. The only difference between them would in fact be the racial characteristics of the former.

We also think that even Pero only marginally supports the constitutionality of this bill as applied to non-members living on reservations. In Pero, the focus of the court's inquiry was on the contacts between the convicted Indian and the Indian tribe and reservation. In S. 1214, the inquiry would appear to be solely directed to contacts between the Indian child and the Indian tribe, whereas the persons whose rights are most directly affected by the bill are the parents or guardians of the child. 3/ Thus, there

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3/ As we understand the bill, this denial of access to state courts would be predicated on the existence of "significant contacts" between the Indian child and an Indian tribe and that this issue would be

> "an issue of fact to be determined by the court on the basis of such considerations as: Membership in a tribe, family ties within the tribe, prior residency on the reservation for appreciable periods of time, reservation domicile, the statements of the child demonstrating a strong sense of self-identity as an Indian, or any other elements which reflect a continuing tribal relationship."

The bill is unclear as to whether this determination would be made by a tribal court or state court.

is little support for the constitutionality of this bill as applied to non-tribal members living on reservations and the rationale applied by the Court in Mancari, Fisher and Antelope would not save the bill. The simple fact is that the parents of an Indian child may find their substantive rights altered by virtue of their Indian blood and the simple fact of residence on a reservation. The Court has never sanctioned such a racial classification which denied substantive rights, and we are unable to find any persuasive reason to suggest that it would do so.

Our conclusion with regard to non-members living on reservations is even more certain in the context of non-members living off reservations. In such a situation, we are firmly convinced that the Indian or possible non-Indian parent may not be invidously discriminated against under the Fifth Amendment and that the provisions of this bill would do so. Assuming a compelling governmental interest would otherwise justify this discrimination, we are unable to suggest what such an interest might be.

For reasons stated above, we consider that part of S. 1214 restricting access to state courts to be constitutional as applied to tribal members. However, we think that S. 1214 is of doubtful constitutionality as applied to non-tribal members living on reservations and would almost certainly be held to be unconstitutional as applied to non-members living off reservations. 4/

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Patricia M. Wald

Patricia M. Wald
Assistant Attorney General

4/ We also note our concern with the language used in sections 2 and 3 of the bill regarding "the Federal responsibility for the care of the Indian people" and the "special responsibilities and legal obligations to American Indian people." The use of such language has been used by at least one court to hold the federal government responsible for the financial support of Indians even though Congress had not appropriated any

(footnote 4 continued)

money for such purposes. White v. Califano, et al., Civ. No. 76-5031, USDC, S. Dak. (September 12, 1977). We fear the language in this bill could be used by a court to hold the United States liable for the financial support of Indian families far in excess of the provisions of Title II of the bill and the intent of Congress.

ARTHUR GAHBOW, PRESIDENT
DARRELL WADENA, VICE PRESIDENT

FRED MC DOUGALL, EXECUTIVE DIRECTOR
KENT P. TUPPER, LEGAL COUNSEL

DANIEL MORRISON, SECRETARY
HARTLEY WHITE, TREASURER

The Minnesota Chippewa Tribe

P.O. BOX 217 — CASS LAKE, MINNESOTA 56633 335-2286
CONSTRUCTION CO. 335-2211 EDUCATION DIVISION — 335-2212

March 8, 1978

Honorable Teno Roncalio
House Interior Committee
House of Representatives
Washington, D.C.

RE: Indian Child Welfare Act, 1977 S.1214

The Minnesota Chippewa Tribe fully supports Bill S.1214. The two (2) greatest social service problems facing our Tribe is finding a permanent funding and the jurisdictional issues. The juristictional issues are addressed in the bill and so is funding but not permanent funding. Our current funding will expire and we will lose our current Social Service Division. A solution to addressing the permanent funding problem should be considered. Our need is to expand our Social Services capabilities so we can deliver all aspects of a welfare department. We can handle them and we want to. In this letter of testimony we have included:

1. Resolution #239-77
2. A breakdown fo our current Social Service Division.
3. Letters of support for Minnesota Chippewa Tribe Social Service Division.
    a. Itasca County
    b. Beltrami County
    c. Cass County
    d. State of Minnesota DPW

MINNESOTA CHIPPEWA TRIBE
SOCIAL SERVICE DIVISION

The Minnesota Chippewa Tribe has been delivering social services to the Indian people on the six (6) Reservations since February 1975. What started as a part time job for a College student has grown into a major Division of the Minnesota Chippewa Tribe.

The present Minnesota Chippewa Tribe Social Service Division consists of three (3) parts: the BIA contracted staff, the American Indian Foster Care Project, adn the Division of American Indian Youth Services.

With the monies contracted from the BIA, a Director, and two (2) Social Services Representatives have been hired. They work with all aspects of social services and on all six (6) Reservations. The American Indian Foster Care Project is funded by HEW and comprises of a Project Supervisor, two (2) Foster Care Workers and a Foster Home and Adoption Worker. They have been working on permanent plannning for Indian children. The third branch to Social Services is Supportive Services to American Indian Youth. The personnel is headed by a Project Manager and there are four (4) co-ordinators. Their area of responsibility is developing programs for Indian youth through Big Brother/Big Sister, Volunteers in Probation and a Mini-Bike Program.

The following is a list of our objectives and goals:

BIA CONTRACTED STAFF

1. To develop and plan for Indian self-determination in the area of Social Welfare.
2. To prepare Indian and non-Indian organizations and agencies to work cooperatively in development of human resources.
3. To maximize Indian utilization of Social Services through diagnosis and referral action, as well as serving as an advocate on call.'
4. To sensitize local, state, public and private social services agencies to the human factors and cultural values, especially attitudes, motivation and psychological readiness of Indians to participate in human service programs.
5. To consult with and secure active participation of Tribal Councils and other Indian groups in the various programs and projects aimed at improvement of social conditions.

AMERICAN INDIAN FOSTER CARE PROJECT

1. Develop better child welfare services - ie; to reduce the # of children separated from their families and to place Indian children in Indian foster or adoptive homes if removal is necessary, to develop a permanent plan for the those Indian children unable to return home.
2. Recruit American Indian foster home and American Indian adoptive homes.
3. Develop tribal social servcies staff capacity for child welfare services delivery and increase county welfare staff awareness in working with Indian families.
4. Develop child welfare resources within the Indian communities.

SUPPORTIVE SERVICES TO AMERICAN INDIAN YOUTH

1. To provide Indian youth with positive personal relationships with people of Indian descent with whom the youth can relate.
2. To gain the Indian community's participation in the community corrections approach as well as in developing an interest in assisting Indian youths.
3. To reduce juvenile delinquency, adult crime and recidivism through Volunteers in Probation, Bin Brother/Big Sisters, Foster Care and the National Youth Project Using Mini-Bikers.
4. To reduce alienation between American Indian youth and the welfare and criminal justice systems.
5. To provide Indian alternatives to social services involved in foster care placement that will strengthen positive identification.
6. To accomplish self-determination for the American Indian through Supportive Services Programs.

Here are the results after three (3) years of operation:

1. Native American professionals and county professionals can work in union to provide quality services for Native American children.
2. When Native American caseworkers are involved in caseloads of Native American children;
    a. The incidence of placement in Indian environments is greatly increased.
    b. The number of voluntary placements of children in alternate home environments is increased.
    c. The incidence of a permanent placement plan is greatly increased.
    d. The number of children moving to an improved placement situation is increased.
    e. The frequency of moves is reduced.
    f. The length of time in foster care is greatly reduced.
    g. The number of licensed Indian foster homes increases.

The Supportive Services to American Indian Youth has only been in existance since August 1977 and here are a list of their recent developments:

AREA	TOTAL ENROLLEES	VOLUNTEERS IN PROBATION ONLY	BIG SISTER/ BIG BROTHER ONLY	VOLUNTEERS ENROLLED IN BOTH PROGRAMS
Duluth	21	10	11	0
International Falls	19	4	15	0
Fond du Lac	11	1	8	2
Mille Lacs	7	5	0	2
TOTAL	58	20	34	4

CLIENTS ENROLLED IN:

AREA	TOTAL CLIENTS	VOLUNTEERS IN PROBATION	BIG BROTHER/ BIG SISTER
Duluth	10	10	0
International Falls	11	2	9
Fond du Lac	14	0	14
Mille Lacs	2	0	2
TOTAL	37	12	25

Referrals for probationers are made to Supportive Services through the Probation Office Departments and court systems. Referrals for Big Brother/Big Sister are made to Supportive Services Program by schools, counselors, judicial systems, welfare departments and parents.

(ATTACHMENT I)

RESOLUTION 249-77

WHEREAS, the bill S.1214 recognizes Tribal authority, and

WHEREAS, the bill S.1214 is in apposition to agencies removing Indian children from their homes without tribal knowledge, and

WHEREAS, the bill S.1214 designates tribal government to place their own children into situations the Tribe feels is best for that child, and

WHEREAS, the bill S.1214 authorizes the secretary to make grants or enter into contracts with Tribe for these services for Indian children.

NOW, THEREFORE BE IT RESOLVED, that the Tribal Executive Committee of the Minnesota Chippewa Tribe, whole heartedly support this legislation.

We do hereby certify that the foregoing resolution was duly presented and enacted upon by a vote of 9 for, 0 against at a special meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum being present, held on September 7-8, 1977, at Duluth, Minnesota.

Arthur Gahbow

Arthur Gahbow, President
THE MINNESOTA CHIPPEWA TRIBE

Daniel Morrison Sr

Daniel Morrison, Sr., Secretary
THE MINNESOTA CHIPPEWA TRIBE

(ATTACHMENT II)

The following is a biographical sketch, in narrative form, of key positions within the Social Service Division.

PROJECT DIRECTOR - Robert Aitken.

Robert is a member of the Minnesota Chippewa Tribe from the Leech Lake Indian Reservation. He is 29 years old, married, and had two children. He is a graduate from Bemidji State University - 1975. He has a B.S. degree in business administration and a minor in Native American Indian Studies.

His work experience includes two years as a home - school co-ordinator for the Bemidji School district. His current position is Director of Social Services for the Minnesota Chippewa Tribe.

Roberts educational and work experience highlight his awareness of and ability to interpret strenghts, needs and shortcomings of the Indian family and community; administrative experience in social service programs e.g., ability to work with professional social workers, psychologists, etc. both public and private; ability to interpret social welfare policy as affecting or notaffecting Native Americans; ability to interpret, lecture and write on Indian values, culture, life style as it fits into the framework of social work theory and practice; and also has been able to prepare training and research proposals, progress and evaluation reports, models and funding proposals.

PROJECT SUPERVISOR - Lila George

Lila is also a member of the Minnesota Chippewa Tribe from the Leech Lake Indian Reservation. She is 31 years old, married and has two children and one foster child. Lila lived in foster homes through out her adolescent years. Also, she and her husband have been a licensed foster home since 1972.

Lila is a graduate of the University of Northern Iowa - 1975. She has a B.A. degree in social work, with a double emphasis in sociology and social psychology.

Her most recent work experience includes director of a youth project, funded by the Governors Crime Commisssion for prevention and control of youth crime on the reservation. She as been a counselor for the Minnesota Chippewa Tribal Adult Vocational Education department and has been Project Supervisor for the past year.

These job experiences highlight her experience in casework ability to conduct interviews, collect and analyze relevant facts, providing necessary information for referral and preparing case file histories; knowledge of program policies and operations to facilitate coordination of the work within a projects total objectives; ability to deal with and relate to Indian people, which requires knowledge of unique Indian values and sensativity to the needs of Indian people; and has the ability to analyze, evaluate, interpret and coordinate program objectives to insure understanding of the work of the project by the Indian community.

FOSTER CARE WORKER - Patricia Morgan

Patricia is a member of the Minnesota Chippewa Tribe, and life time resident of the Leech Lake Indian Reservation. She is 25 years old, married and has one child. Patricia was a foster child in her youth.

Patricia is a high school graduate of Remer, Minnesota.

She has been a foster care worker for the Leech Lake Reservation Business Committee since July 1975 to the present time.

This work experience highlights her ability to deal with and relate to Indian people on the reservation; knowledge of Indian values, lifestyle, culture, and awareness of the social problems and needs of Indian people; ability to interpret this knowledge within the framework of social work theory and practice; and the ability to work closely with social workres in public welfare agencies. Throughout this experience as a foster care worker, Patricia had demonstrated a high aptitude and willingness to learn and a high concern for Indian people.

FOSTER HOME AND ADOPTION WORKER - Marlene Hardy

Marlene is a member of the Minnesota Chippewa Tribe and a Leech Lake Reservation enrollee. She is 28 years old, married, and has five children.

Marlene is a high school graduate and has accumulated 60 credits at Bemidji State University toward a degree in Early Childhood Education.

For three years, she was a lead teacher for the Leech Lake Reservation Headstart. She then moved on to be director of the Cass Lake Day Care Center. From October 1976 to the present, she has been with the Minnesota Chippewa Tribe Scoial Servcies.

These job experiences have served to highlight her ability to work with local Indian families and organizations; ability to conduct interviews and collect relavent data, referral counseling as well as preparing case file histories on clients; ability to work with social workers in public welfare agencies; and demonstrates a commitment to Indian people through action and applicaiton of these skills.

Marlene's foster life - 3 years as a foster child and currently a foster parent.

SOCIAL SERVICE REPRESENTATIVE - Cy Howard Jr.

Cy is a member of the Minnesota Chippewa Tribe from the White Earth Indian Reservation. He is 39 years old and a gratuate from University of Minnesota in 1975. He received a B.S. degree with a major in social work and a minor in psychology. His work experience includes 1 year as the Education Director for Forrest Lake Public Schools. During the past 9 months he has worked in the Minnesota Chippewa Tribe Social Service Division.

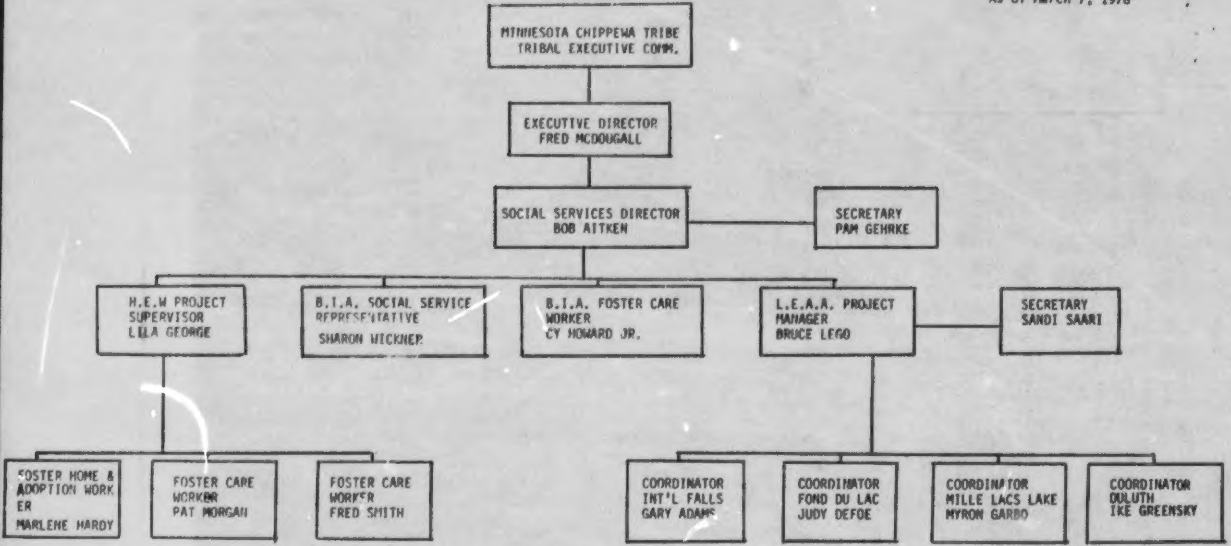
SOCIAL SERVICE REPRESENTATIVE - Sharon Wickner

Sharon is a member of the Sault St. Marie Tribe in Michigan and graduated in 1977 from Bemidji State University. She is degreed in social work with a minor in psychology. She has worked with the Cass Lake Public Schools and has just recently started with us.

FOSTER CARE WORKER - Fred Smith

Fred is a member of the Lac Court O' Reilas band of Chippewa's. He graduated from Macalaster College with a major degree in History and a minor in Sociology in 1977. He has worked as a Child Protection Services Field Worker and has been with Social Services since August 1977.

"As of March 7, 1978"


MINNESOTA CHIPPEWA TRIBE TRIBAL EXECUTIVE COMM.
EXECUTIVE DIRECTOR FRED MCDOUGALL
SOCIAL SERVICES DIRECTOR BOB AITKEN
SECRETARY PAM GEHRKE
H.E.W PROJECT SUPERVISOR LILA GEORGE
B.I.A. SOCIAL SERVICE REPRESENTATIVE SHARON WICKNER
B.I.A. FOSTER CARE WORKER CY HOWARD JR.
L.E.A.A. PROJECT MANAGER BRUCE LEGO
SECRETARY SANDI SAARI
FOSTER HOME & ADOPTION WORKER MARLENE HARDY
FOSTER CARE WORKER PAT MORGAN
FOSTER CARE WORKER FRED SMITH
COORDINATOR INT'L FALLS GARY ADAMS
COORDINATOR FOND DU LAC JUDY DEFOE
COORDINATOR MILLE LACS LAKE MYRON GARBO
COORDINATOR DULUTH IKE GREENSKY

(ATTACHMENT III)

ITASCA COUNTY
SOCIAL SERVICE P. O. Box 570, Grand Rapids, Minn. 55744
Director/Edwin N. Yattaw — Telephone 218/326-9441

Mr. Robert Aitken, Director
Social Services
Minnesota Chippewa Tribe
P. O. Box 217
Cass Lake, Minnesota 56633

RECEIVED
MINNESOTA CHIPPEWA TRIBE

May 5, 1977

Re: American Indian Foster
Care Project

Dear Mr. Aitken:

This agency has had interest and awareness of the Foster Care Project entered into by the Minnesota Chippewa Tribe with Health, Education, and Welfare, and Cass County Social Service. I have been at several gatherings where earlier the Project Staff was describing the project and the intent of the grant from H.E.W.

This agency provides social and financial services to the residents of Itasca County. Within the general population of Itasca County, there are a number of American Indians. On an overall margin we estimate that 8% of our total caseload is Indian. This figure is inclusive of both our financial and social service programs. Most of the persons of American Indian heritage reside on the portion of the Leech Lake Reservation that extends into Itasca County.

The matter of concern in your project is foster care services for the American Indian. Our agency in the past has been able to recruit into our foster care program a number of Indian families. As much as possible we have always attempted to provide Indian homes for Indian children. We were not always successful.

It is felt that the project such as established some few months ago was one that may develop the needed resource of added foster care services for the American Indian of the Leech Lake Reservation area.

This agency is supportive of your efforts in this particular area of foster care development, and the agency's assurance given is that we would mutually and cooperatively extend our hand in any development of this particular area of service as is able to be demonstrated and/or achieved.

Very truly yours,

George B. DeGuiseppi

George B. DeCuiseppi
Social Work Supervisor

BELTRAMI COUNTY WELFARE DEPARTMENT
C. E. MELBERG, DIRECTOR
PHONE 751-4310
BOX 688
BEMIDJI, MINNESOTA 56601

May 5, 1977

Mr. Bob Aitken
Director of Social Services
Minnesota Chippewa Tribe
Box 217
Cass Lake, MN 56633

Dear Mr. Aitken:

This letter is written in support of the extension or renewal of the Leech Lake Indian Foster Care Project.

It has been an interesting experience for me to have had some association with the project since it began. I firmly believe that it is a necessary project and one that certainly ought to be continued if we are to meet the goals that both you and we are striving to achieve. As I am the Director of Social Services in the Beltrami County Welfare Department, my relationship to the project is one of being on the fringes rather than the center of the project's focus and concern.

During the months that the project has been in existence, several significant changes have occured for us. We have attempted for many years to recruit Indian foster homes for Indian children and we have met with very little or no success. As a secondary bi-product of the project, we now have several Indian foster homes that are presently actively involved in caring for children. Another significant bi-product of the project is the closer working relationship which now exists between the entire Social Service Division of both the Minnesota Chippewa Tribe at Cass Lake and the Beltrami County Welfare Department at Bemidji. And, of course, a most significant change is occuring in the provision of protective services for all children, but especially the Native Americans.

It is certainly our hope that the project will be continued and adequately funded for further pursuit of the goals that I have mentioned. I can certainly pledge the continued support and cooperation of this agency in preserving a quality of care for children, including the protection of their heritage.

Yours truly,

Lloyd W. Johnson

Lloyd W. Johnson
Director of Social Service

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LWJ:ja

Cass County

DEPARTMENT OF SOCIAL SERVICES

P.O. BOX 519, WALKER, MINNESOTA - 56484

(218) 547-1340

JOHN FJELSTUL
Director

May 9, 1977

Robert Aitken, Director
Social Services
Minnesota Chippewa Tribe
P.O. Box 217
Cass Lake, MN 56633

Dear Bob:

We wish to share with you our agency's positive feelings toward your efforts to seek continued funding for the American Indian Foster Care Project.

It has been our pleasure to work with the Minnesota Chippewa Tribe, Leech Lake Reservation Business Committee and the American Indian project staff persons for the past several months through the current Foster Care Project. We feel the project has demonstrated a workable relationship between Indian and County governing bodies is possible.

We support the concept of self determination as vital to the future of the American Indian. You can be assured of our continued interest and willingness to cooperate in the development of social service programming in the American Indian community.

Cordially

John Fjelstul

John Fjelstul
Director

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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

OFFICE OF THE
COMMISSIONER
[illegible]

GENERAL
INFORMATION
[illegible]

May 6, 1977

Mr. Robert Aitken
Director of Social Services
Minnesota Chippewa Tribe
P.O. Box 217
Cass Lake, MN 56633

Dear Mr. Aitken:

I understand that the Minnesota Chippewa Tribe plans to apply for a research and demonstration grant from the Department of Health, Education, and Welfare in order to provide improved child welfare services to Indian families.

On behalf of the Department of Public Welfare, I want to express our encouragement and support of what the Minnesota Chippewa Tribe hopes to accomplish and I think that Minnesota would be a good testing ground for such a demonstration project.

I am aware of the fact that the Leech Lake Project has had some problems in its organization, but have been fully assured that this is in the process of being ironed out and will be plunging "full speed ahead".

Good luck in this new endeavor.

Sincerely yours,

Zetta Feder

Zetta Feder
Foster Care Specialist
Service Development Section
Division of Social Services

ITh/cif

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AN EQUAL OPPORTUNITY EMPLOYER

House Subcommittee on Indian Affairs and Public Lands

My name is Bill Caddy, and I am a supervisor working for the Cass County Department of Social Services. My purpose here today is to describe a mutual effort by the Minnesota Chippewa Tribe and Cass County to provide better child welfare services for Indian families on the Leech Lake Reservation.

Cass County is located in the North central part of Minnesota and includes the bulk of the Leech Lake Reservation. In Minnesota the legal responsibility for the provision of social services to Indian families on the reservations of the Minnesota Chippewa Tribe rests with the county of residence. In Cass County, American Indians constitute approximately 10% of the total county population, but Indian children constitute 80% of the children Cass County has placed in foster care. Thus, historically, an Indian child in Cass County was about 8 times more likely to be separated from his family and cultural heritage than a non-Indian child. The children were usually placed in non-Indian foster homes. These appalling statistics are a legacy of the past. The Minnesota Chippewa Tribe and the Cass County Department of Social Services are now working together to remedy what can only be described as a social catastrophe.

In July of 1975, the Cass County Welfare Board agreed to fund a full time Indian child welfare service worker under the supervision of the Minnesota Chippewa Tribe to work specifically with Indian children on the Leech Lake Reservation. As mutual respect and trust developed between the agencies, we jointly prepared an application through the Minnesota Department of Public Welfare for a project demonstration grant from the National Center for Child Advocacy, under the auspices of the Minnesota Chippewa Tribe. The application was successful, and the American Indian Foster Care Project began operation Oct. 1, 1976.

The project hypothesis was that American Indian staff, operating under the supervision of tribal government and within the context of child welfare standards as adopted by the State of Minnesota, could more effectively deliver child welfare services to American Indian families.

We are now well into the second year of the project, and the social service staff of the Minnesota Chippewa Tribe have demonstrated that this hypothesis is valid. The American Indian Foster Care Project has demonstrated to us that the Minnesota Chippewa Tribe has the expertise and capacity to deliver Indian child welfare services in a thoroughly competent and professional manner.

The project has now expanded into the three other counties contained within the Leech Lake Reservation and has been received with open arms by the social service staffs of those other counties. It should be noted that none of the counties on the Leech Lake Reservation has ever had any Indian social workers on staff, and that the counties have been trying to deliver social services to Indian families for years with little success. I am sure that I represent the feelings of the social workers of these other counties as well as Cass County when I say that this project has demonstrated to us that there is a better way to provide services to Indian families than the way we have been doing it for the past 40 years.

The Minnesota Chippewa Tribe has the capacity and professional expertise to immediately assume responsibility for Indian child welfare services on the Leech Lake Reservation, and we in Cass County would strongly support such a plan should it become legally and financially possible. Bearing in mind that this capacity has been developed in less than two years, and that there is now a core of experienced staff, the Minnesota Chippewa Tribe could develop the capacity to provide Indian child welfare services to all six reservations in Minnesota within a short time.

I will not presume to try to describe tribal projects in detail or to speculate about future tribal direction, but I do appreciate the opportunity to tell this committee about a successful service delivery model from the perspective of a county agency responsible for the direct delivery of social services on the Leech Lake Reservation.

In conclusion: there are two fundamental aspects of the situation addressed by this Act that should no longer be ignored:

(1) Indian social workers work more effectively with Indian families.

(2) Tribal government can effectively deliver social services within the context of the services standards of the State of Minnesota.

Thank you for the opportunity to talk to you today, and if there are any questions, I will try to answer them at your pleasure.

STATEMENT OF REP. DONALD M. FRASER BEFORE THE SUBCOMMITTEE ON INDIAN AFFAIRS AND PUBLIC LANDS ON "THE INDIAN CHILD WELFARE ACT"

March 9, 1978

MR. CHAIRMAN, through the "Indian Child Welfare Act" Congress is exhibiting its concern for the rights of Native American peoples throughout the United States. Congress is making it clear that it is the policy of this nation to protect the rights of individuals to retain strong fundamental ties to their cultural background.

Much has already been said concerning the "Indian Child Welfare Act" both in support and in opposition to the bill. I personally believe that it will be impossible to produce a perfect bill; but I am convinced that the problem which we are addressing is so serious that we must not be deterred by the complexity of the issue. We must rather look closely at the proposal and attempt to establish a framework around which a rational policy can be formed.

I'd like to comment specifically on two portions of the "Indian Child Welfare Act." These are Sections 101 (e) and 102 (c) and (d) which establish notifications requirements with respect to placement of children residing off-reservation; and Section 202 (a) providing for the establishment of off-reservation Indian family development programs.

The Fifth Congressional District of Minnesota, which I represent, includes most of the City of Minneapolis. The population of Minneapolis is approximately 375,000, and the Native American population of the city is estimated at approximately 15,000 or 4%.

The Hennepin County Welfare Agency provides supervision of child placement services for Minneapolis and its suburbs. The Native American population of Hennepin County is estimated at approximately 2%.

In 1977, the Hennepin County Welfare Department initiated a project funded under the Law Enforcement Assistance Administration to study child placement in Hennepin County. The initial survey shows that Native American children make up a disproportionately high percentage of children placed. These figures show that in a three month period in 1977[1] Indian youth comprised approximately 12% of those placed. This suggests that the placement rate amongst Indian youth was approximately six times that of non-Indians. For ages 0-4, the rate of use of placement services was approximately ten times that of non-Indians.

It would be fruitless at this time to question why the high rate of placement amongst Indian youth. But it is apparent from this initial data that the problems noted by the American Indian Policy Review Commission with respect to displaced Indian youth throughout the United States are also apparent in this urban area.

With this in mind, I would like to turn to the notification requirements which would be placed on county welfare agencies by Sections 101 (a) and 102 (c) and (d) of the bill.

These sections would require that prior to placement or transfer of an Indian youth the local agency must notify the parents or extended family of the youth as well as a tribe with which the youth has significant contact.

---

[1] As the Hennepin County "Place. Project" is a two year study which began in mid-1977, figures as of March 1978 include only the initial three month survey. It is expected that the succeeding quarterly surveys will be similar to these initial findings.

Although on its face this would appear to be an insignificant burden, persons familiar with placement procedures in urban areas assure me that due to the large numbers of persons involved in the placement process, it is highly unlikely that all individuals involved could reasonably be expected to have the knowledge or expertise needed to fulfill the requirements of these sections.

I would ask that this Subcommittee consider amending the Act to include provision for the designation by the Secretary of a suitable Indian organization in an urban area which has a large Indian population to serve as a quasi-representative of the tribe for notification purposes. This organization would then be responsible for notifying the proper tribal authorities.

I fear that without such a provision this legislation would create such a morass for county administrators that the Act would be largely ignored in urban areas.

Another provision upon which I would like to comment is Section 202 (a) which would allow the Secretary of the Interior to provide for the establishment of Indian family development programs off-reservation.

This provision could prove to be the basis for important improvements in the family structure of many urban Indians. Unfortunately, past experience with programs established by Congress and administered through the Bureau of Indian Affairs does not bode well for the establishment of programs in urban areas.

The Bureau has in the past exhibited a philosophy which denies the rights and privileges of Native Americans living in urban areas. I have served an urban district for too long, and I have put in too many hours fighting for the establishment of programs to meet the needs of urban Indians, to expect ready compliance by the Bureau of Indian Affairs.

I would urge this Subcommittee to mandate the establishment of urban Indian family development programs at a rate commensurate with the need in such areas. Only then could we be assured that the Bureau will not feel bound by its on or near reservation guidelines.

Mr. Chairman, I am aware that the Department of the Interior has asked that this Subcommittee not approve this legislation. I am aware that the "Indian Child Welfare Act" is not supported by the Department of Health, Education and Welfare, which prefers its own proposal. But I am also aware that before Congress began action, these two agencies which have an inherent duty to provide for the needs we now seek to address had done regrettably little in this area.

Though history may show that the legislation which this Subcommittee reports was not perfect, waiting for guaranteed perfection is not a luxury we can often afford. And of one thing I am sure -- without action no problem would ever be solved.

Urban Indian Child Resource Center
390 EUCLID AVENUE -> OAKLAND, CALIFORNIA 94610
TELEPHONE: (415) 832-2306

March 9, 1978

TO: Committee on Insular and Interior Affairs

FROM: Urban Indian Child Resource Center, Oakland, California

WITNESSES: C. Jacquelyne Arrowsmith, R.N.
Board Member, Urban Indian Child Resource Center

Omie Brown, Director
Urban Indian Child Resource Center

SUMMARY: The Urban Indian Child Resource Center and Indian Nurses of California, Inc., based on experience in the field of child welfare, strongly support S. 1214. However, in its present working form, it excludes thousands of deserving and eligible American Indians, specifically those Indians who are members of federally terminated tribes. By re-writing the definition of Indian in Section 4, paragraph (b), this possible oversight would be rectified.

BACKGROUND: The Urban Indian Child Resource Center was founded three years ago by Indian Nurses of California, Inc. The Center was the first urban Indian project funded through the National Institute of Child Abuse and Neglect in 1975. The Center's main objective is to help Indian children who become innocent victims of parental neglect and/or abuse.

Urban Indian Child Resource Center

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Before the establishment of the Resource Center, most of the Indian children identified as being neglected were immediately taken up by the county court or welfare system and placed in non-Indian foster homes. As a result, Indian children ended up in homes of a foreign culture with very little chance of ever returning to their rightful parents.

The Center is located in the San Francisco Bay area and serves a population of 45,000 Native American Indians. Eighty per cent (80%) of the urban Indians are mobile and often return to their homeland. With this fact in mind, the Center provides a linkage between urban and reservation living. Aid is given to the Indian families in a broad array of services ranging from the availability of emergency food and clothing to identifying Indian homes to be licensed as foster homes.

39 [illegible]

The Center has served 215 families which becomes approximately 1500 clients when each family member is counted individually. Ther are at least 500 persons peripherally involved with the Center and this number increases as the Resource Center becomes more established in the community.

Indian Nurses of California, Inc., is a non-profit organization established in 1972. The nurses represent thirty-five tribes and reside throughout the state of California. The Indian Nurses of

California Executive Council acts as the Board of Directors for the Urban Indian Child Resource Center and meets quarterly to monitor the Center's activities.

RECOMMENDATIONS:

1) S.1214 needs to be strengthened but has to become law as it is essential to reduce external placement of Indian children and increase the capacity of young Indian families to understand child development and utilize community resources.

2) We respectfully suggest that the definition of "Indian" be changed to read as follows:

Con 34 #37

> "Indian" or "Indians", unless otherwise designated, means any individual who (1), irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendent, in the first or second degree, of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is determined to be an Indian under regulations promulgated by the Secretary.

3) We recommend that Indians rally to support this bill, S.1214.

RESOLUTION

WHEREAS Indian children have been removed from Indian communities by the action of governmental and private agencies, and

WHEREAS This practice has continued despite it's destructive impact on Indian children, Indian families and the Indian community, and

WHEREAS Public policy is needed to change these practices so as to strengthen the American Indian family

THEREFORE BE IT RESOLVED that when it becomes necessary to place an Indian child, the following priorities be observed by public and private agencies as a matter of social policy:

1. to place the child with his extended family, even if this involves transporting the child to relatives on his reservation in another state;
2. to place the child within his tribe;
3. to place the child with an Indian family of another tribe;
4. to place the child within a non-Indian home, with the foster parents agreeing that an Indian agency will be a part of the foster home supervision and that the child remains in touch with the Indian community through traditional culture and language education.

Furthermore, it is essential that this policy insure that the natural parents and/or family be allowed to maintain contact with the child. Foster placement should be viewed as temporary, not as permanent replacement for his natural family. Indian families must be provided the support services and every opportunity to remain an intact family.

Be it further resolved that the Indian Nurses of California urgently communicate these concerns to professional child welfare agencies and to local, state and federal policy makers.

August 27, 1977
Los Angeles, CA.

Testimony

to

Subcommittee on Indians and Public Lands

of the

Committee on Interior and Insular Affairs
U.S. House of Representatives

March 9, 1978

Presented on behalf of
The Child Welfare League of America, Inc.

by

Mary Jane Fales, Director, ARENA Project

Dorothy Buzawa, Supervisor, ARENA Project
North American Center on Adoption

STATEMENT

We are Mary Jane Fales, Director, and Dorothy Buzawa, Supervisor of Operations, of the Adoption Resource Exchange of North America, a Project of the North American Center on Adoption. The Center is a division of the Child Welfare League of America, Inc., a national voluntary organization with approximately 380 voluntary and public child welfare affiliated agencies in the United States and Canada. We are speaking on behalf of the Board of Directors of the League.

The purpose of the League is to protect the welfare of children and their families, regardless of race, creed or economic circumstances. The Center specifically addresses the need for children to grow up in a permanent nurturing family of their own. The Center is a not-for-profit corporation that aids in the adoption of special needs youngsters by providing consultation and education to agencies, schools of social work, concerned citizen groups and the general public as well as exchange services.

The Adoption Resource Exchange of North America (ARENA) has assisted almost two thousand children over the last 10 years to find adoptive homes. Begun 20 years ago as the Indian Adoption Project, it has also helped over 800 Indian children find permanence. The Project has always been concerned with placing these children in homes of their own race, and in the last several years has increasingly facilitated such placements. In fiscal year 1975-76, for example, 33 Indian children were assisted and out of that number 29 were placed with a family that had at least one Indian parent. Also, ARENA has consulted widely with agencies in North America on the importance of placing Indian children for adoption within their own culture.

Our general experience points to the need for legislation, not only for Indian children, but on behalf of the total child welfare population. This population needs permanency whenever possible and our systems need to be improved and geared toward that end. The best means of achieving permanency is to provide the systems that will help children stay within their biological families whenever possible. If parents are unwilling to or incapable of raising their children and there is no other biological family member able to assume this role, then permanent placement with an adoptive family of the same cultural background is the most beneficial step. If, finally, it is determined that a child cannot stay within his own biological family and a home of the same cultural heritage is not available, permanent placement with a loving adoptive family is still desirable. Studies have shown that children can adapt to transracial placements and benefit from them.

We are pleased to have the opportunity to respond to Senate Bill 1214, known as the Indian Child Welfare Act. We support the protection of Indian children and maintenance of their cultural identity in foster care and adoption. We particularly encourage the financial incentives and legal supports that would develop the Indian family through specific programs on and off the reservation. We are also very pleased to see that adoption subsidies are part of this legislation. This component is very important in order to encourage more Indian adoptive families to take on the added expense and responsibilities of another child. Another important section of this bill includes education programs for Indian court judges and staff in skills related to the child welfare and family assistance programs. We see this education as essential to providing good care and appropriate planning for the children in their care. We also support the Indian adoptee's right to information at age 18 to protect his rights flowing from a tribal relationship and many of the fine provisions assuring that the biological parents are accorded a full and fair hearing when child placement is at issue.

However, our organization disagrees with S1214 as it is currently written. It imposes unrealistic standards and requirements in child placement matters, interfering with the lives of Indian children and families. The laws effecting the general population are different and less restrictive. First, by putting control of Indian child welfare matters into tribal hands, it does not respect the confidentiality and autonomy of the birth parents to determine the future of their child. Non-Indian birth parents thus have more rights and privacy than Indian parents. Second, it is too inclusive in its definition of Indian children. This means black/Indian children, or Mexican Indian children might be denied their other heritages, that they may be denied placement with their extended non-Indian biological parents. It could also mean that even a full Indian child, placed with a non-Indian foster family, could be reviewed and replaced, even though strong emotional ties existed with that family. Third, it creates many time delays in the placement process and in transfer of jurisdictions. This causes extra insecurities for a child, since time passes much more slowly for him than for adults. Fourth, the bill does not stipulate any accountability system to protect the child against a lifetime of temporary care.

We, therefore, strongly urge the following sections be revised:

101(c): This allows a parent or parents to withdraw consent for any reason prior to the final decree of adoption (with certain provisions). This could mean a long, needless period of risk, as most states now take from 1 to 1½ years until finalization is possible. Most states currently have either irrevocable consents, or only allow 30, 60, or 90-day periods in which parents may withdraw their consents. We therefore, suggest a period of 30 days from surrender, in which the parent or parents have the opportunity to withdraw their consent.

102(c): Where an Indian child is not a resident of the reservation, he is included as an Indian child if he has had some significant contact with his tribe. This seems to be a much too inclusive definition of an Indian child, not taking into account possible non-Indian heritage and contacts. It gives jurisdiction to the tribe, over the rights of parents. It can also cause disruptions of foster placements, where the foster parents are intending or about to adopt the child. This could disturb the child and require removal from his "psychological parents." It would also be time consuming to transfer jurisdiction from state to tribal courts.

102(e): This provision also seems too inclusive, as it would include the child being considered a resident of the reservation even though his parents had placed him while off the reservation.

102(f): Again, the child is obliged to be considered Indian and thus placement is mandated either within the extended family, a home on the reservation, etc. This may occur even in the absence of "significant contacts" with the tribe. This seems discriminatory against both the Indian biological parent and child because they are the only Americans to whom these laws would apply.

102(g): This provision also invades the privacy of the parents and child by serving written notice to the chief executive officer of the tribe or another person so designated by the tribe. Again, in situations with other U.S. citizens, this doesn't happen. If the child were from an Italian community in New Jersey, that community would not be informed about the whereabouts of one of it's former residents. If a child were from a Jewish family in Montana, the Jewish community would not be informed of the whereabouts of one of it's Jewish children.

103(a): We suggest adding--"to a non-Indian family"--as a fifth preference. This would ensure that the child be granted a permanent living situation and that it is valued above a temporary situation.

103(b): We suggest adding--"to a non-Indian family"--between preferences 5 and 6. This includes a further option for the child, prior to considering any custodial institution.

We strongly recommend the inclusion of an accountability system within this bill. A periodic review of each child welfare case would assure that a child is being cared for properly; that case plans are made for him to return home to his biological family or move out of the temporary situations into a permanent adoptive home.

SUMMARY

This statement on the Indian Child Welfare Act of 1977--S1214--is presented by Mary Jane Fales, Director, and Dorothy Buzawa, Supervisor of Operations, of the ARENA Project of the North American Center on Adoption, a division of the Child Welfare League of America, Inc.

We appreciate the opportunity to express the views of the Board of Directors of the Child Welfare League of America regarding the needs of Indian Children and their families. We commend the House Committee on Interior and Insular Affairs for bringing attention to this issue through the proposed legislation.

Our organization agrees with many of the concepts behind S1214, including the need for the protection of Indian children and the maintenance of their cultural identity in foster care and adoption. We also feel that the proposed Indian family development program is vital to improving the quality of Indian family life. We are particularly enthusiastic about those sections of the legislation that give financial and legal incentives for keeping Indian children within their biological families, educating Indian court judges and responsible child welfare staff, as well as offering subsidies to Indian adoptive families who might otherwise be unable to afford another child.

However, we disagree with major sections of S1214 because of the following concerns:

- There is no protection for children against a "lifetime" of temporary care. Any child-placing agency should have an accountability system that prevents children from getting "lost" and encourages case planning that includes a permanent family.
- The tribe's prerogative to review and intercede on all Indian child placements invades the rights and privacy of parents in determining the future of their children.

- The bill appears to encourage placement within the culture to the point of preference of temporary foster care or institutions rather than placement outside of the Indian culture, should the latter prove the only way to provide permanency. Although incentives to recruit and study Indian families should be offered, experience and research show that transracial adoptive placements can produce stable adults with a sense of ethnic identity.
- The definition of Indian children who would fall under provisions of this bill is too inclusive. It includes many who are also from equally unique cultures.
- The provision that a parent may withdraw adoption consent up to finalization creates too long a period of uncertainty for the child. This is extremely detrimental. For any child to delay placement or live with the insecurity of a potential move is to undermine his sense of emotional commitment and security with a family. This may also act as a barrier to Indian families who may not want to adopt because of the risk of losing a child they have grown to love.

Boston Indian Council, Inc.
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Telephone 232-0343-44

TESTIMONY ON THE INDIAN CHILD WELFARE ACT OF 1977

SUBMITTED TO

HOUSE INDIAN AFFAIRS SUB-COMMITTEE

BY

SUZANNE LETENDRE, DIRECTOR

NORTHEAST INDIAN FAMILY STRUCTURE PROJECT

BOSTON INDIAN COUNCIL, INC.

FEBRUARY 9, 1978

Page 1.

I am here to speak about the needs of Native American families residing in the Northeast and the discriminatory nature of the Indian Child Welfare Act of 1977. We do not challenge but rather strongly support those sections of the Bill which insure tribal court and tribal council, a significant degree of authority in matters regarding the future of our children when foster care and adoption determinations are made. We do not object to the definition of tribe in this instance being limited to those tribes served by the Bureau of Indian Affairs. We also approve of those sections which provide for the involvement of Indian organizations in areas of family development and child protection. However, we most adamantly object to the definition of Indian and Indian organization (Sec. 4 (b) and (d)), which deal with Indians outside the tribal context and which if enacted would unfairly exclude the vast majority of Native Americans in the Northeast from benefits, protection and much needed assistance provided for in the Bill.

In the greater Boston area alone, where approximately 4,000 Native Americans reside, we estimate as many as 300 Indian children have been placed in foster or adoptive placement, the great majority of which were placed in non-Indian homes. In Maine where the constituency, family structure and child rearing practices closely resembles those of Native Americans in Boston and which is the only New England state with available statistics, Indian children are placed in foster homes at a per capita rate 19 times greater than that for non-Indians and two thirds of such Indian children are placed with non-Indian families. The American Indian Policy Review Commission found that Aroostook County, Maine had the highest placement rate of any county. This current rate of family disruption that is occuring amongst the Maine - Massachusetts Indian population has not gone unnoticed. Both the

Page 2.

Native American community and the U.S. Dept. of Health, Education and Welfare, have recognized the need for special intervention and prevention programs for Indians in the Northeast. They also have begun to take steps to develop a program to address the situation. The U.S. Dept. of H.E.W. has granted the Boston Indian Council, Inc. (B.I.C.) a small amount of funds on a short term basis to initiate a Northeast family support project to meet the special child welfare needs of Indian people in New England. However, it is highly impropable, considering the ceiling on State Title XX funds, that the state will be able to sustain this program beyond this year.

The project is a joint effort of B.I.C. and two Indian organizations in Maine, the Central Maine Indian Association in Orono and the Association of Aroostook Indians in Houlton, to ensure the integrity and stability of off-reservation Native American families. It is the hope of the project staff that this collaborative effort will protect the ethnic heritage and political birthright of Native Americans, enlighten social institutions to the unique needs and problems facing the Indian community, and change the current patterns of foster care as practiced for Indian people by non-Indian social service agencies.

Since the commencement of the project, our staff has had to deal with numerous blatant injustices on the part of social agencies with regards to Native American families in the Boston community. Two such instances dealt with single mothers who had their children taken from them on rather dubious grounds and who desperately sought our support to help them regain custody of their children. The first case deals with a mother who had her child placed in foster care because on one occasion she was not at home when her child returned from nursery school. When the mother requested our assistance in getting her child back, we immediately contacted the social worker involved and asked on what legal grounds was the child removed.

The social worker was speechless for there was no legitimate grounds on which she could justify her department's actions. Fortunately in this case we were instrumental in quickly reuniting the child with her mother and brother. The second case involves a young mother who is presently in a foster home and who has spent the most part of her life drifting from seven different foster homes. A few months ago she also had her own child taken from her. For several months the state retained physical custody of her child without filing any petition, thus without the appropriate legal sanctions for removing and retaining the child. When this matter finally came before the court, legal custody was then temporarily transferred to the state. The mother is now faced with a very difficult and demoralized process of trying to prove that she is in fact a fit and capable mother.

Since the social agencies involved disapprove of raising the child in the mother's foster home where five other Indian children are currently being cared for, they recommend that either the mother change foster homes, thus continuing the transient foster care syndrome or have the 17 year old mother move into her own apartment, thus face the economic and emotional adjustment to urban living alone.

When we examine the Indian Child Welfare Act s. 2 (a) we find the problem facing our Native American constituency in the Northeast precisely as described in the Bill. Yet by virtue of a most restrictive definition of Indian therein the benefits of the Bill become regionally discriminatory. Hence, the proposed legislation which purports to be a general act i.e. "Indian Child Welfare Act" dealing with a generic problem in fact fails to do so by failing to address the problem as it is felt by those Native Americans who are not included in the Bill's restrictive definition of "Indian".

Page 4.

This definition of Indian is contrary to the drift of Indian legislation in the past two decades: where Congress has dealt with Indians outside the tribal context, a broader definition has always been used. For instance:

I. CETA Title 3
II. ANA Urban and Rural grants
III. Indian set-aside for nutrition CSA
IV. Indian Education Act

One clear example of a less restrictive definition can also be found in the Indian Health Care Improvement Act, which I believe was dealt with by this Committee and which is enclosed along with my testimony. Our question is on what rational basis should this Bill break from the long standing policy of Congress most recently included in the Indian Health Care Improvement Act? We strongly object to the use of the Indian Child Welfare Act to narrow the definition of Indian outside the tribal context. Such an action puts in jeopardy Indian children and families who based on this Bill's preamble should be included.

We realize that some of these services eligibility issues may be solved when the administration or Congress solves its recognition policy, but no one can be certain about when or how such a policy will be implemented. Even when a policy is in fact implemented, a significant portion of Native Americans who are in need of assistance will still be ignored such as: a) those members of state recognized tribes who may not seek or who are unable to seek federal recognition, b) full bloods with less than ¼ of any one particular tribe who are nevertheless denied membership to a tribe because of their blood quantum; c) members of descendants of members of tribes terminated since 1940, d) those terminated individuals of federally recognized tribes and e) individuals who lost tribal status as a result of relocation. Hence, those Native Americans who are faced with adjusting to off reservation living, who lack the support and assistance of their tribal courts and councils, who are alienated in urban settings and lost in a world unaccustomed to the Indian way of life and the Indian family structure, and who in fact make up a significant portion of the alarming national statistics on Indian family disruption, are ignored by this Bill, left stranded, unassisted while they watch in bewilderment the termination of their parental rights and the placement of their children with people who are total strangers to them.

Clearly there is no morally justifiable basis for supporting the restrictive definition of Indian found in this Bill. We recommend that s. 2 (b) be ammended in line with the definition of Indian found in s. 4 (c) of the Indian Health Care and Improvement Act so that benefits under s. 202., 203 and 302 will be available to a broader category of Native Americans. Within the context of tribal jurisdiction and services the definition can be narrow, but in the broader context of off-reservation Indian organizations a more expansive definition must be used.

We urge that you reject an arbitrary policy that would unfairly determine which Native American children will be blessed with the comfort and security of growing up with their families and communities and which will be torn from their families, their mothers and fathers, brothers and sisters and robbed of their Indian identity and political rights.

TESTIMONY OF TRILBY BEAUPREY

MENOMINEE INDIAN
AND
DIRECTOR OF THE ALTERNATIVE LIVING ARRANGEMENTS PROGRAM
WITH
GREAT LAKES INTER-TRIBAL COUNCIL, INC.
ODANAH, WISCOSIN, 54806

BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

March, 1978

My name is Trilby Beauprey and I am a Menominee Indian from the State of Wisconsin. I am presently the Director of the Alternative Living Arrangements Program with Great Lakes Inter-Tribal Council, Incorporated in Odanah, Wisconsin.

Our program is responsible to the Great Lakes Inter-Tribal Council, Incorporated service area encompassing ten (10) Indian reservations in thirty-one (31) of the seventy-two (72) counties of Wisconsin. When I began working in May, 1977 I knew that it would be my job, along with two other staff members, to recruit foster parent(s) who were Native American. Their homes would serve as emergency temporary shelter care facilities for 12-17 year old Native American status offenders.

I would like to put you in touch with information, feelings, and national statistics which will help you envision the plight of my people today.

Dr. David W. Kaplan in his address to the Seventh Annual North American Indian Women's Assn. Conference, June 14, 1977 says,

> "The Native American Family system has been and is subjected to enormous economic, social and cultural pressures. Although the traditional extended family exists in many places and kinship ties remain strong it is clear that the old ways are not so powerful and wide spread as they once were.[1] (End Quote)

S.1214 can help build and support the Indian family who has been or is weakened because of disruptions to it's structure. S.1214 is important and deserves your full support.

Dr. Kaplan continues,

> "Certainly poverty, high unemployment, poor health, substandard housing and low educational attainment impact tremendously on the strength of the family but equally important is cultural disorientation and loss of self esteem."[2]

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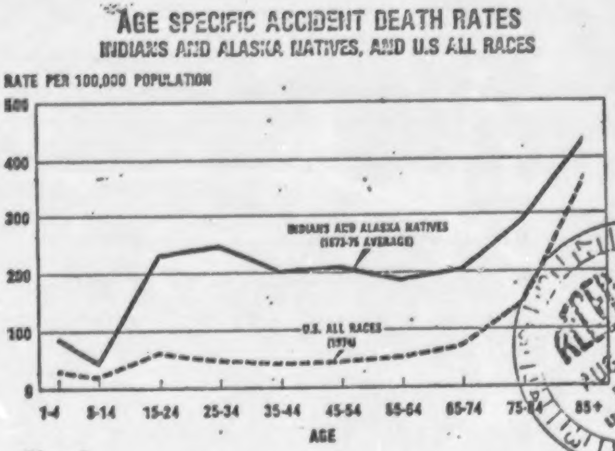
[1] David W. Kaplan, M.D., "It's 1977-How Healthy Are Your Children?" Seventh Annual North American Indian Women's Assn. Conference, June 14, Chilocco, Oklahoma

[2] Ibid.



AGE SPECIFIC ACCIDENT DEATH RATES
INDIANS AND ALASKA NATIVES, AND U.S ALL RACES

Fig. 1

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AGE SPECIFIC HOMICIDE, SUICIDE, DEATH RATE

INDIANS AND ALASKA NATIVES, AND U.S. ALL RACES

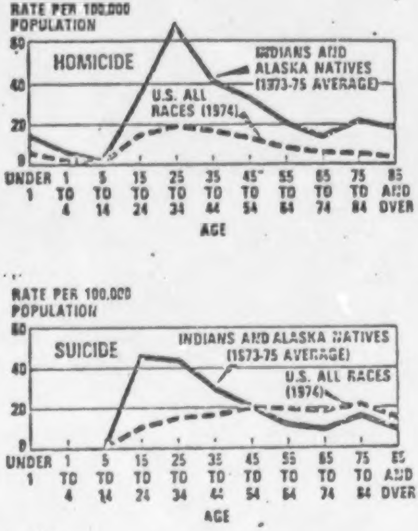

Fig. 2

ALCOHOLISM DEATH RATES

INDIANS AND ALASKA NATIVES COMPARED TO U.S. ALL RACES

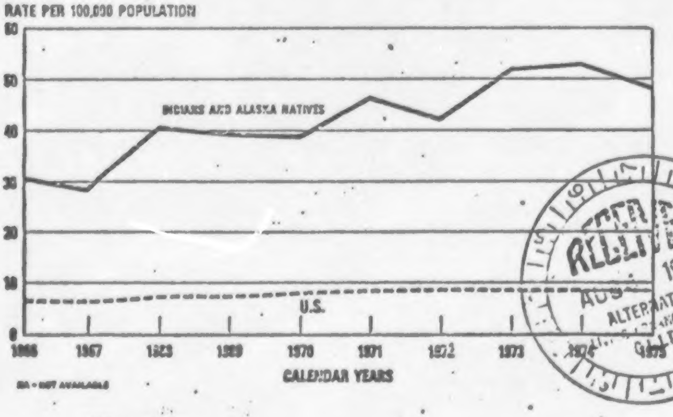

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Fig. 3

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> "The American Indian still ranks lowest in per capita income of any national racial group with a per capita income of 46% of white American income. 48% of all rural Indian families are below the poverty level.
>
> Accidental death rates experienced by the Indian population remain higher than the U.S. total rate (Figure 1). The accidental death rate for Indian children ages 1-4 is three times the national level.
>
> Some of the symptoms of cultural, community and family distress are the high suicide and homocide rates, the number of accidents and, of course, alcoholism and drug abuse. Serious manifestations of these trends are reflected in the precipitous climb in the rate of juvenile crime.
>
> For young adults ages 15-24 years, the suicide rate is four times the nation as a whole and the homocide rate is about three times the U.S. total (Figure 2). And the major epidemic of alcoholism continues to spread (Figure 3)."[3]
> (End Quote)

By recognizing these horrible facts we can understand what it means when we read in S.1214 Findings, Section 2-(c), "The seperation of Indian children from their natural parent(s), including especially their placement in institutions or homes which do not meet their special needs, is socially and culturally undesireable. For the child such seperation can cause a loss of identity and self esteem, and contributes directly to the unreasonably high rates among Indian children for dropouts, alcoholism and drug abuse, suicides and crime. For parents, such seperation can cause a similar loss of self esteem, aggravates the conditions which initially gave rise to the family breakup, and leads to a continuing cycle of poverty and despair."

S.1214 in Findings, Section 2-(a) finds that: "an alarmingly high percentage of Indian children, living within both urban communities and Indian reservations, are seperated from their natural parent(s) through the actions of non-tribal government agencies or private individuals or private agencies and are placed in institutions (including boarding schools), or in foster or adoptive homes, usually with non-Indian families." I would like to share with you, further, information concerning Wisconsin Indian adoption and foster care statistics which were part of an Indian Child Welfare statistical survey, July, 1976 by the Assn. on American Indian Affairs, Incorporated.

---

[3] Ibid.

The basic facts are:

(1) There are 1,824,713 under twenty-one year olds in the State of Wisconsin.[4]

(2) There are 10,176 under twenty-one year old American Indians in the State of Wisconsin.[5]

(3) There are 1,814,537 non-Indians under twenty-one in Wisconsin.

I. ADOPTION

In the State of Wisconsin, according to the Wisconsin Department of Health and Social Services, there were an average of 48 Indian children per year placed in non-related adoptive homes by public agencies from 1966-1977.[6] Using the State's own figures,[7] 69 percent (or 33 children) are under one year of age when placed. Another 11 percent (or five children) are one or two years old; 9 percent (or four children) are three, four, or five years old; and 11 percent (or six children) are over the age of five. Using the formula then that; 33 Indian children per year are placed in adoption for at least 17 years: five Indian children are placed in adoption for a minimum average of 16 years; four Indian children are placed in adoption for an average of 14 years; and six Indian children are placed in adoption for six years; there are an estimated 733 Indian children under twenty-one year olds in nonrelated adoptive homes at any one time in the State of Wisconsin. This represents one out of every 13.9 Indian children in the State.

---

[4] U.S. Bureau of the Census, Census of Population: 1970 Volume I. Characteristics of the Population, Part 51, "Wisconsin" (U.S. Government Printing Office: Washington, D.C.: 1973), p. 51-60

[5] U.S. Bureau of the Census, Census of Population: 1970; Subject Reports. Final Report PC(2)-1F. "American Indians" (Washington, D.C.: U.S Government Printing Office: 1973). Table 2, "Age of the Indian Population by Sex and Urban and Rural Residence: 1970, " p. 16.

[6] Letter and statistics from Mr. Frank Newgent, Administrators Division of Family Services, Wisconsin Department of Health and Social Services, April 25,1973.

[7] Ibid.

Using the same formula for non-Indians (an average of 473 non-Indian children per year were placed in non-related adoptive homes by "public agencies from 1966-1970,[8] there are an estimated 7,288 non-Indians under twenty-one year olds in non-related adoptive homes in Wisconsin. This represents one out of every 249 non-Indian children in the State.

CONCLUSION:

There are therefore by proportion 17.9 times (1,790 percent) as many Indian children as non-Indian children in non-related adoptive homes in Wisconsin.

II. FOSTER CARE

In the State of Wisconsin, according to the Wisconsin Department of Health and Social Services, there were 545 Indian children in foster care in March, 1973.[9] This represents one out of every 18.7 Indian children. By comparison, there were 7,266 non-Indian children in foster care in March, 1973[10] representing one out of every 250 non-Indian children.

---

[8] Ibid.

[9] Ibid

CONCLUSION:

There are therefore by proportion 13.4 times (1,340 percent) as many Indian children as non-Indian children in foster care in the State of Wisconsin.

III. COMBINED FOSTER CARE AND ADOPTIVE CARE

Using the above figures, a total of 1,278 under twenty-one year old American Indian children are either in foster care or adoptive homes in the State of Wisconsin. This represents one out of every 9 Indian children. A total of 14,554 non-Indian children are in foster care or adoptive homes, representing one out of every 124.7 non-Indian children.

CONCLUSION:

By per capita rate Indian children are removed from their homes and placed in adoptive homes or foster care 15.6 times (1,560 percent) more often then non-Indian children in the State of Wisconsin.

The Wisconsin statistics do not include adoption placements made by private agencies and therefore are minimum figures.

A list of changes that I see as desireable in S.1214 are as follows:

Under Title 1 - Child Placement Standards

Through Great Lakes Inter-Tribal Council, Incorporated opportunities exist for tribal members on various reservations to identify Native American families interested in providing a home for the placement of an Indian child(ren).

Foster home are available for emergency situations described as an "immediate physical or emotional threat" to the child in S.1214. Therefore I would omit:

---

[10] Nat. Center for Social Statistics, U.S. Department of Health, Education and Welfare. "Children Served by Public Welfare Agencies and Voluntary Child Welfare Agencies and Institutions, March 1973," DHEW Pub. No.(SRS) 76-

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Section 101 (a) line 22-24, temporary...threatened inclusive
Section 101 (b) line 7-9, temporary...threatened inclusive
Section 101 (c) line 19-22, temporary...threatened inclusive
Section 102 (a) line 5-7, temporary...threatened inclusive
Section 102 (d) line 3-5, temporary...threatened inclusive

And substitute the following for each of the omissions above:

Under circumstances when the physical or emotional well-being of the child is immediately threatened, emergency temporary placement is to be within the reservation or county of a cooperating blood relative, private Indian individual, Indian family, Indian Tribe or Indian organization which offer such placement facilities/home(s) (if these facilities have not been exhausted through contacts as resources no child placement shall be valid or given any legal force and effect).

I support this type of change because I sincerely believe, as it has been my experience, that there are viable Indian people resources within the reservation and the county to meet these needs. I would uge that only after these resources have been exhausted that any other placement be allowed.

I see S.1214 giving Indian tribes jurisdiction over the welfare of a precious resource-their youth. That is why I do not object to the written notices however without any specifications as to 'when' the 30 days commences is ambiguous.

I propose for:

Section 101 (b) line 11
Section 101 (c) line 24 omit "of"
Section 101 (d) line 6
Section 101 (e) line 22

the following be added:

> "being made via registered mail and the thirty days commencing with the tribal governing bodys' receipt of such notice."

I would like to see it made possible for the tribes as well as the families to know all parties;

"prominent ethnic background"

within Section 101 (d) line 13

and

"their phone number or the phone number of a consenting neighbor"

within Section 101 (d) line 13.

Knowing the prominent ethnic background of the parties involved will help to establish whether or not this child will be placed with people compatible with that child's background.

If it becomes necessary to contact any of the parties it would be advisable to obtain the involved parties telephone numbers.

Also, although I hold deep respect for the decision of a judge I would not want to see a determination passed down on whether a child is Indian or not based solely on the Judges or a hearing officers discretion rather under:

Section 101 (e) line 2 after "notified" include: "To further ensure that the best interested of the child are adhered to in making such a decision an advocate for the child in question must be present and heard."

When withdrawing from an adoptive child placement I believe the family should be given the right to withdraw the child at any age. Therefore:

Under Section 102 (c) line 12 "and the child is over the age of two" should be omitted.

I want the Tribal governing body to be aware of what is happening to it's youth that is why

Under Section 102 (c) line 18 after adoption, I would add: "and the Tribal governing body has been notified via registered mail of this action."

Under Title II - Indian Family Development

We have been recruiting foster homes on the reservations and the counties in which the reservations are located, therefore, I do not want to see

Indian organizations limited to off-reservation Indian family development programs. I hereby request that an Indian organization be given the sole right to determine whether it wants to carry off-reservation or on reservation Indian family development programs.

I would then change:

Section 201 (c) line 8 after reservation to include "or on reservation"

This would give Indian tribes within an Indian organization the option to carry on an Indian family developement program as a Statewide project for people on or off the reservation. The following revision permits such a decision:

Section 202 (a) line 22 after tribe to include "or Indian organization"

Section 202 (a) line 23 after operate to include "on the reservation or off the reservation."

I see great possibilities under this Act for non-tribal government agencies to contract for the Indian organizations' foster homes resource, Therefore under:

Section 202 (b) line 23 after tribe include "or Indian organization"

An Indian organization can determine for itself whether it wants to operate an Indian family development program off or on the reservation under the Act. Therefore, under:

Section 203 line 9 after reservation include "or on reservation"

Our office has been approached to investigate the well-being and best interest of a youth already in placement by a member of the extended family and/or a private Indian individual I would like to see:

Section 204 (a) line 19 after requests, to include "or where the natural parent, Indian adoptive parent, blood relative or guardian does not exist or lacks the ability to care for the child. Then together or seperately, an interested private Indian individual(s) and the adolescent in question may request placement in an Indian foster home that desires the child, and,

Section 204 (a) line 1 to include after restoring "or permitting"

and,

Section 204 (a) line 4 include after left "Or in the case of an interested private Indian individual to allow a child placement to be made."

Dr. Kaplan concludes:

"The Indian culture with its customs and traditions, especially that of the Indian extended family, is a very valuable heritage and must not be lost. There is much we have to tell and teach the culture threatening our demise." (End Quote)

S.1214 can only be effective if you assure available approporiate funds for the attainment of its purpose and it's life. In developing this I would encourage the Secretary to involve more Indian people in its further development.

Thank you.

Arizona

OFFICE OF THE GOVERNOR
STATE HOUSE
PHOENIX, ARIZONA 85007

WESLEY BOLIN
GOVERNOR

IN REPLY
REFER TO:

RECEIVED
JAN 23 1978
RECEIVED

COPY

January 12, 1978

The Honorable Morris Udall
House Subcommittee on Indian
Affairs and Public Lands
U. S. House of Representatives
Washington, D.C.

Dear Congressman Udall:

Attached are comments on Senate Bill 1214, the Indian Child Welfare Act, as passed by the United States Senate and sent to this office by Senator James Abourezk.

We appreciate the opportunity to review this important legislation.

Sincerely,

Wesley Bolin
Governor

WB/pbh

cc: Senator Abourezk

S. 1214 Indian Child Welfare Bill

We continue to support this bill as compatible with, and contributing to sound principles of service to children and their families. There remain some areas of concern that we hope will be addressed by the House Committee now considering this Bill:

Sec. 101C
pg. 29
lines 8-15

"If the consent is to an adoptive child placement, the parent or parents may withdraw the consent for any reason at any time before the final decree of adoption."

This provision will add a high risk factor to the placement of Indian children, and may significantly reduce their opportunities for adoptive placement. Given thorough counselling prior to the relinquishment, and compliance with all other federal and local statutes, the right to withdraw consent up to the time of the final decree of adoption seems unnecessary for the parent and potentially damaging to the child.

Sec. 101 (e)
pg. 31
lines 3-5

"Such notice shall include the exact location of the child's present placement..."

Sec. 102 (a)
pg. 31
lines 22-24

"Such notice shall include the child's exact whereabouts..."

Sec. 102 (e)
pg. 33
lines 12-14

"Such notice shall include the child's exact whereabouts..."

This requirement may be appropriate in most instances. However there will be cases in which providing this information to the parent(s) or custodian may endanger the child and/or the family providing care. A qualification to protect the child by witholding this information from an abusive or otherwise violent parent seems appropriate.

Sec. 104
page 39
lines 13-22

"In order to protect the unique rights associated with an individual's membership in an Indian tribe, after an Indian child who has been previously placed attains the age of eighteen, upon his or her application to the Court which entered the final placement decree, and in the absence of good cause shown to the contrary, the child shall have the right to learn the tribal affiliation of his parent or parents and such other information as may be necessary to protect the child's rights flowing from the tribal relationship."

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> The original wording of this section allowing the adult adoptee to learn the names of parents and siblings, and reasons for severing the family relationship was preferable.

Two significant areas of concern are not addressed in this Bill, which promise confusion if not clarified:

1. Applicability of state laws regarding termination of parental rights by Court action.
2. When a child has one Indian and one non-Indian parent, safeguards for the rights and interests of the non-Indian parent, and the child's relationship to the non-Indian community.

Summary

In general, there is a leaning toward recognizing parents' rights at the expense of children's rights, which is not uncommon in social welfare legislation. Ideally, this imbalance should be corrected. In spite of this, the bill is generally satisfactory, and the aim of recognizing and safeguarding cultural differences of children and parents for the purpose of strengthening families is compatible with sound social work practice that should be available to every family, regardless of cultural background.

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BILL CLINTON
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK

February 23, 1978

Senator James Abourezk
Senate Indian Affairs Committee
5325 Dirkson Office Building
Washington, D.C. 20510

Dear Senator Abourezk:

Your letter concerning S. 1214, the Indian Child Welfare Bill, has been referred to my desk for handling.

Part of my responsibilities include the representation of the Juvenile Services Division of this State. In that capacity I have become acutely aware of the part played by the family in healthy child development. A child's development cannot be underplayed in addressing the problems of juveniles.

S. 1214 is to be commended as representing an enlightened and healthy approach to promoting the family instituion, not only among Indians but in the United States overall.

Thank you for affording this office an opportunity for comment. Please do not hesitate to call if further help is necessary.

Sincerely,

BILL CLINTON

By: Vashti O. Varnado
VASHTI O. VARNADO
Assistant Attorney General

VOV:cd

cc: Congressmen Morris Udall & Teno Roncalio
House Subcommittee on Indian Affairs
and Public Lands
U.S. House of Representatives
Washington, D.C.

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California

(916) 445-9533

MERVYN M. DYMALLY
LIEUTENANT GOVERNOR

State of California
OFFICE OF THE LIEUTENANT GOVERNOR
STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814

RECEIVED
JAN 17 1978

January 11, 1978

The Honorable James Abourezk, Chairman
Select Committee on Indian Affairs
5325 Dirksen S.O.B.
Washington, D.C. 20510

Dear Senator Abourezk:

I am sending this letter in support of S. 1214.

I am aware that non tribal government agencies separate many Indian children from their natural parents and place them in institutions or non-Indian foster homes. I realize that it is culturally and socially undesirable to place Indian children in homes or institutions which do not meet their special needs; indeed, this most likely does more harm than good.

In view of these and many other inadequacies, I feel there is a great need to establish standards for placing Indian children in foster homes and to assist Indian tribes in instituting family development programs to secure and stabilize the Indian families and culture. My support of S. 1214 is without qualification.

Sincerely,

MERVYN M. DYMALLY

MMD:jmk

Colorado

MAR 31 1978

9C

J.D. MacFarlane
Attorney General
David W. Robbins
Deputy Attorney General
Edward G. Donovan
Solicitor General

The State of Colorado
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street, 3rd. Fl.
Denver, Colorado 80203
Phone 839-3611 & 839-3621

March 27, 1978

Senator James Abourezk
Senate Indian Affairs Committee
5325 Dirksen S.O.B.
Washington, D.C. 20510

RE: S.1214 - Indian Child Welfare Bill

Dear Senator Abourezk:

I have reviewed your letter dated December 1, 1977, and S.1214. My comments follow below.

§201(b) of the Indian Child Welfare Bill states that Indian foster or adoptive homes may be licensed by an Indian tribe. This section also states that "for the purposes of qualifying for assistance under any federally assisted program, licensing by a tribe shall be deemed equivalent to licensing by a State." This section raises a very serious question of adequacy of care. The licensing of foster care homes requires a high level of experience and knowledge in the area of child care. Although §201(a) of the Bill, among other things, provides that the Secretary of the Interior can prescribe rules establishing "(1) a system for licensing or otherwise regulating foster and adoptive homes." §201(b) does *not* require Indian tribes to license foster homes pursuant to these regulations. The Indian Child Welfare Bill, therefore, does not guarantee that a tribe which licenses a foster care home will do so in accordance with any sort of standards.

The Bureau of Indian Affairs provides virtually all of the child welfare services furnished on Colorado Indian Reservations. The State of Colorado presently does not license foster homes on Indian reservations, nor does it pay for any foster care services because jurisdiction over such on-reservation activities has not been granted by act of Congress. §201(b) would allow Indian tribes to license foster care homes on Indian reservations. Once a home is licensed by a tribe, Colorado would be forced to treat it as though licensed by the State. Thus, Colorado could end up paying for foster care in homes that it did not license.

Depending upon the extent to which Indian tribes located in Colorado take advantage of this section, the State could end up paying for a great deal of the foster care services on Indian reservations when presently it is paying for none. The State, therefore, has a considerable interest in seeing that licensing is done in accordance with adequate standards.

The power to license foster homes should be delegated only to an entity which has the expertise to properly exercise this power. The Indian Child Welfare Bill gives this power to Indian tribes which may or may not exercise it properly and in the best interests of all Indian children. The Bill could be improved by amending the last sentence of §201(b) to read:

> "For purposes of qualifying for assistance under any federally assisted program, licensing by a tribe pursuant to the regulations described in §201(a) of this Act shall be deemed equivalent to licensing by a State, if such standards are at least as stringent as those imposed by the State."

If I can be of any further assistance in this matter, please feel free to contact me.

Very truly yours,

J. D. MacFARLANE
Attorney General
State of Colorado

JDM:RMH:nh

The Department of Law
State of Georgia
Atlanta
30334

ARTHUR K. BOLTON
ATTORNEY GENERAL

132 STATE JUDICIAL BUILDING
TELEPHONE 656-3300

fil

January 4, 1978

Honorable Teno Roncalio
U. S. Representative, Wyoming
Chairman, House Subcommittee on Indian
Affairs and Public Lands
U. S. House of Representatives
Washington, D. C. 20515

RE: S. 1214, Indian Child Welfare Bill

Dear Representative Roncalio:

Recently Senator James Abourezk, South Dakota, forwarded me a copy of the captioned bill with a request for such comments as I would like to make with respect to the bill. In that the bill directly concerns matters which are the responsibilities, under State law, of two of my State agency clients, rather than comment myself on matters within their responsibilities, I have requested each to provide their comments directly to you. These agencies are the Department of Human Resources and the Georgia State Commission of Indian Affairs.

Nevertheless, if I may be of assistance to you, please do not hesitate to contact me.

Sincerely yours,

Arthur K. Bolton
ARTHUR K. BOLTON
Attorney General

AKB/ad

cc: Honorable James Abourezk
United States Senator, South Dakota

Georgia

W. Douglas Skelton, M.D./Commissioner

GEORGIA DEPARTMENT OF HUMAN RESOURCES

47 TRINITY AVENUE, S.W., ATLANTA, GEORGIA 30334

January 17, 1978

RECEIVED
JAN 26 1978

Honorable Teno Roncalio, Chairman
House Committee on Indian Affairs and Public Lands
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Roncalio:

On December 1, 1977, Senator James Abourezk referred to the Georgia Attorney General's Office a copy of S. 1214, the Indian Child Welfare Bill. This is the proposed legislation which will have substantial impact on Indian tribes and organizations as well as agencies providing child welfare services. The Attorney General's Office has referred this proposed legislation to me as Commissioner of the Department of Human Resources and to the Georgia Commission on Indian Affairs, the two major agencies providing services to persons in Georgia with Indian heritage.

On review of this proposed bill, I believe that the purposes and standards provided in this Act are consistent with the philosophy of this agency, which is that one's heritage is very important to the individual and that services must be provided in such a manner as to preserve that heritage for the individual. It is the intention of this agency to manage all services to persons of Indian heritage in such a manner as to meet the standards; however, it should be of particular value to have an established recognizable network of Indian tribes or organizations with whom we can collaborate in the best interest of children needing placement.

Sincerely,

W. Douglas Skelton, M.D.
Commissioner

WDS:hdl

cc: Mrs. Patricia Johnson, Director
Division of Family and Children Services

Miss Joyce Stringer, Director
Specialized Services Section

Mr. Nathan Andereck, Chief
Services to Families and Children

Miss Hester Dixon
Social Services Consultant

Senator James Abourezk

Mr. Arthur Bolton
Attorney General

Massachusetts

The Commonwealth of Massachusetts
Commission on Indian Affairs
State House – Rm. 176-176A
Boston, Mass. 02133
Telephone 617-727-6394

MICHAEL S. DUKAKIS
Governor
WILLIAM G. FLYNN
Secretary

COMMISSIONERS:
Beatrice Gentry, Chairman
Edith Andrews, Secretary
Amelia Bingham
Zara CiscoeBrough
Philip Francis
Frank James
Clarence Moran

JUL 21 1977

July 7, 1977

The Honorable James Abourezk
Chairman
Senate Sub-Committee on Indian Affairs
Room 1105
Dirkson Senate Office Building
Washington, D.C. 20510

Dear Senator Abourezk:

The Massachusetts Commission on Indian Affairs has reviewed your Indian Child Welfare Act of 1977 (S.1214), and we feel that this bill is worthy of serious attention and consideration of the United States Congress.

As you seem to understand, for too many years, too many of our Indian Children have been removed from their families, relatives and Indian communities by non-Indian social workers who are not capable of properly assesing the Indian family unit/life-style. Most of these children have been adopted by or put in foster homes of non-Indian people. These children are being robbed of their culture, for only an Indian family as the same Nation as the child can raise the child in his/her proper cultural ways. These children sustain tremendous psychological suffering from this situation which continues to have substancial impact on them in their adulthood. A good number of these children never live long enough to reach adulthood.

We feel that S.1214 is making an honest attempt to help remedy this situation. However, parts of Section 4 (Definitions) pose major problems in terms of application of the bill's provisions to all Indian People living in the United States. Section 4 (a) says, "'Secretary,' unless otherwise designated, means the Secretary of the Interior." It is therefore obvious that it is intended that this bill be implemented through the Bureau of Indian Affairs. The BIA has its own criteria as to who the Indian People are. For the most part, Indian People East of the Mississippi will be excluded (as has been the case historically) from the provisions of the bill, as well as all other Indian People who do not have direct affiliation with Tribes occupying federal trust reservation lands. Yet, the children of the "non-recognized" Tribes are equally subject to this immoral mistreatment as the children of the "recognized" Tribes. Section 4 (b), (c) and (d) supports the BIA criteria by definition, again leaving out non-reservation Indian People.

There is yet another group of Indian People who are left out of this bill. Many Indians from Tribes whose homelands are in Canada are living in the United States, especially in the border states. These children and their parents also need the protection of this bill. While they are living in the United States, they face the threat of United States authorities taking their children; therefore, while they are living here they should also be extended the protection from that threat.

We are proposing that the bill be amended as follows:

1. Section 4 (a) – "Secretary, unless otherwise designated, means the Secretary of the Department of Health, Education and Welfare." – With this change, the bill would not go through the BIA; therefore, BIA criteria would not be used to exclude particular Tribes.

2. Section 4 (b) – The definition of "Indian" should read as follows: "American Indian or Indian" means any individual who is a member or a descendent of a member of a tribe, band or other organized group of native people who are either indigenous to the United States or who otherwise have a special relationship with the United States through treaty, agreement or some other form of recognition.

3. Section 4 (c) – The definition of "Indian Tribe" should read as follows: "Indian Tribe" means a distinct political community of Indians which exercises powers of self-government.

4. Section 4 (d) – The definition of "Indian Organization" should read as follows:
"Indian Organization" means a public or private nonprofit agency whose principle purpose is promoting the economic or social self-sufficiency of Indians in urban or rural non-reservation areas, the majority of whose governing board and membership is Indian.

With the exception of these proposed amendments, we feel that this is a very crutial bill deserving of passage and implementation. The Massachusetts Commission on Indian Affairs is in basic agreement with and in support of the bill, particularly in its suggested amended form. We strongly urge that you seriously consider these proposed amendments and support their implementation, in the best interests of our Indian Children.

Sincerely,
Beatrice Gentry
Beatrice Gentry
Chairman

/c-js

New Mexico

STATE OF NEW MEXICO
OFFICE OF THE GOVERNOR
SANTA FE
87503

JERRY APODACA
GOVERNOR

January 16, 1978

RECEIVED
JAN 23 1978
RESOLVED

The Honorable James Abourezk
1105 Dirksen Bldg.
Washington, D. C. 20520

Dear Senator Abourezk:

Because I firmly believe that the future of our country and its strength lay in our children, I am writing to express my full support of S.1214, The Indian Child Welfare Act of 1977.

This bill goes along way toward recognizing the parental rights of the Indian children as well as the well-meaning involvement of non-Indians in educating and training these children to reach their highest potential.

New Mexico has done much to improve the welfare of its youth, and it is indeed gratifying to see that the federal government is taking steps on a national level to protect their rights as well.

I urge full support and strongly recommend passage of Bill S.1214.

Sincerely,

JERRY APODACA
Governor

JA:lw

North Dakota

Arthur A. Link
Governor

January 31, 1978

The Honorable Quentin N. Burdick
United States Senator
Room 451, Russell Office Building
Washington, D.C. 20510

Dear Quentin:

Recently you have been contacted regarding S. 1214, "The Indian Child Welfare Act of 1977," which is supported by the North Dakota Indian Affairs Commission, on grounds that such legislation is long overdue because it establishes standards for the placement of Indian children in foster or adoptive homes in order to prevent the breakup of Indian families.

It has also been brought to your attention that the North Dakota Indian Affairs Commission opposes H.R. 9054, "The Native Americans Equal Opportunity Act;" H.R. 9950, "The Omnibus Indian Jurisdiction Act of 1977;" and H.R. 9951, "The Quantification of Federally Reserved Water Rights for Indian Reservations Act."

I have just received a copy of United Tribes Educational Technical Center Resolution No. 78-02-UT expressing their opposition to H.R. 9054, H.R. 9950, and H.R. 9951.

I agree with the positions taken by the North Dakota Indian Affairs Commission and by the United Tribes Educational Technical Center on these matters.

Please feel free to use this letter in any way you see fit in order to promote these objectives.

With best regards,

Sincerely yours,

Art

ARTHUR A. LINK
Governor

AAL:ah

State of North Dakota, Executive Office, Bismarck, North Dakota 58505 / 701-224-2200

Oklahoma

STATE OF OKLAHOMA
OFFICE OF THE GOVERNOR
OKLAHOMA CITY

DAVID L. BOREN
GOVERNOR

October 21, 1977

Mr. Michael Cox
Minority Counsel
Select Committee on Indian Affairs
United States Senate
Room 5331, Dirksen Senate Office Bldg.
Washington, D. C. 20510

Dear Mr. Cox:

At the request of Senator Dewey F. Bartlett, I have received a copy of S. 1214, the "Indian Child Welfare Act of 1977." I have reviewed the original and redrafted bill thoroughly. I believe this bill merits full endorsement. The guarantees provided in S. 1214 for Indian children will contribute to maintaining the stability of Indian families. In addition, the bill recognizes the special "non reservation" condition which exists in Oklahoma.

I commend the Select Committee on Indian Affairs for its work. If my office can assist you further, please contact Mrs. Gail Scott. I am pleased to lend my support to the passage of this important legislation.

Sincerely yours,

DAVID L. BOREN

OREGON

JAMES A. REDDEN
Attorney General

DEPARTMENT OF JUSTICE
State Office Building
SALEM, OREGON 97310
Telephone (503) 378-4400

[illegible] 7 1978

February 28, 1978

Peter S. Taylor
Special Counsel
United States Senate
Select Committee on Indian
 Affairs
Washington, D.C. 20510

Dear Mr. Taylor:

My understanding of S. 1214 is that there would be "a chilling effect" on placements of Indian children in non-Indian settings, although it would not be "impossible" for Indian children to move through the juvenile corrections system or the state adoption system. My comments were directed to the legislation with that understanding in mind.

I will be interested in the revisions, if any, made of the legislation but as stated in earlier correspondence, we have no objection to the thrust of the legislation.

The courts in Oregon have often said that all legislation dealing with children is to be construed to benefit the child. That is the point of this legislation and all of us hope that the objective is attained.

Very truly yours,

Jim Redden

James A. Redden
Attorney General

JAR:cm
cc: Douglas Nash

Washington

RECEIVED
AUG 19 1977

June 7, 1977

Senator James Abourezk
Select Committee on Indian Affairs
U.S. Senate
Washington, D.C.

Dear Senator:

We appreciate the opportunity to provide comments on S.1214.

At this time we would like to register general support for the bill because it faithfully reflects definite solutions to the many complicated social and jurisdictional problems and issues identified during the 1974 Indian Child Welfare Hearings. This is a tribute to S.1214 because so much federal legislation today fails to clearly address the causes, or at least some of the basic roots of problems identified through the legislative hearing process. S.1214 does progress toward a meaningful system to erase the negative aspects of Indian child welfare programs in a manner which coincides with the federal policy of Indian Self Determination. In addition S.1214 establishes an enlightened and practical approach to legal jurisdiction and social services delivery to Indian People.

We are not including any recommendations for specific modifications at this time, but we will be working with and in support of such recommendations which will soon be forthcoming from individual Indian tribes and organizations in Washington state and the National Congress of American Indians.

While S.1214 does not amend P.L. 83-280, it will provide some important financial and social service relief and protections to Indian tribes, organizations, and individual families and children in partial P.L. 83-280 states such as Washington. Of course, the recent landmark U.S. 9th Circuit Court of Appeals decision regarding the reversal of State P.L. 83-280 jurisdiction on the Yakima Reservation emphasises the need for the passage of S.1214.

Thank you again for the opportunity to register support for S.1214.

Sincerely,

Don Milligan

Don Milligan
State Office Indian Desk
Department of Social and Health Services
Washington State

S.1214
Wisconsin

The State of Wisconsin
Department of Justice
Madison
53702

Bronson C. La Follette
Attorney General

David J. Hanson
Deputy Attorney General

March 13, 1978

The Honorable James Abourezk
Senate Indian Affairs Committee
5325 Dirksen State Office Building
Washington, D.C. 20510

Dear Senator Abourezk:

Re: The Indian Child Welfare Bill S-1214.

Thank you for providing me with a copy of S-1214, the Indian Child Welfare Bill. You indicate that the legislation has been referred to the House Committee on Interior and Insular Affairs Subcommittee on Indian Affairs and Public Lands, and that you and the house subcommittee and committee chairmen would like my comments on the bill as passed by the Senate.

I agree that special legislation to resolve Indian child welfare problems is needed. A primary concern is whether the tribes or the states have jurisdictional responsibility for Indian child welfare matters. The current jurisdictional uncertainty in Public Law 280 states such as Wisconsin will be eliminated by the proposed legislation. By making clear that tribal government with federal financial support rather than state government has the responsibility for such matters there will be greater assurance nationwide that Indian children will be able to find placement in Indian homes and in Indian-operated facilities.

It is my belief that issues involving jurisdiction are the most pressing in Indian law today. In Wisconsin, such questions involve virtually all subject matter areas including child welfare. I am advised that both the State Department of Health and Social Services and various county social service agencies have established and are currently implementing a policy of placing Indian children in Indian homes whenever such homes are available. Such placements, of course, occur both within and without reservation boundaries with perhaps the largest numbers of such placements being found in urban areas with large Indian populations. Two concerns involving the exercise of jurisdiction are worth special consideration.

First, the legislation seems to extend tribal jurisdiction anywhere within the state and arguably anywhere within the United States. In other words, if my reading of the legislation is accurate, the state court involved is required to make a determination of whether the child has significant contacts with an Indian tribe regardless of location (sec. 102(c) and (f)), and if so, then jurisdiction is transferred to that tribe if it has a tribal court. It would appear that most Indian people residing outside reservation boundaries would satisfy the criteria used for determining significant contact since maintaining tribal relations is a common practice.

There are obvious potential problems associated with the transfer of jurisdiction to tribal courts. For example, the parent or parents and child may be located in an urban center a long distance away from the reservation making personal contact between them and the tribe difficult or perhaps impossible. Solving such practical problems must occur at some point. Where, however, transfer to a tribal court is not appropriate because of lack of significant contacts, the state courts must nevertheless, in the absence of good cause shown to the contrary, comply with the preferences set forth in sec. 103. It is unclear what would constitute good cause, but experience has shown that the principal criticism has been that state standards for determining acceptable adoptive or foster care homes tend to eliminate many Indian families. This is the second point worth special consideration.

It is true that Wisconsin has established high standards for placing children in adoptive and foster care homes. Although as indicated the policy has been to attempt to place Indian children with Indian families from the same tribe or from other tribes when necessary, the fact remains that on occasion suitable Indian families under state standards have not been found necessitating placement with non-Indian families. The objective, however, of ensuring that Indian children will be able to maintain their tribal heritage may outweigh any competing interest the state may have in applying state standards for determining quality of homes for placement purposes. Effective tribal government, of course, can reduce or eliminate such concerns. Therefore, perhaps the most critical areas of the legislation involve effecting basic relationships between the state and Indian tribes.

Although each tribe is somewhat unique, it is, nevertheless, important that basic governmental structures and institutions either be created or strengthened by all tribes. Attention and focus on the concept of tribal self-government has only recently begun to improve and strengthen the governments of

Wisconsin tribes. Appropriations, of course, are needed to realize effective self-government. Lack of sufficient federal funds could severely curtail the ability of tribes to be self-governing in child welfare matters.

Once tribes develop viable institutions to exercise governmental powers, existing inter-governmental models could be adopted or modified to take into consideration the unique status of Indian communities. Obviously, new procedures can be developed where necessary to enable coordination and cooperation between the state (and local units of government) and individual tribes (or there may be inter-tribal governmental organizations established.)

As with any major piece of legislation, a number of questions will no doubt arise as tribal government assumes primary responsibility for Indian child welfare matters. Such questions as which court will determine paternity, the effect of voluntary placement by a parent or parents, the availability and payment for state facilities, and similar questions, will no doubt arise. In resolving such problems, cooperation among the federal, state and tribal governments is extremely important. By promoting cooperation the legislation may help avoid litigation on such matters.

Sincerely yours,

Bronson C. La Follette
Attorney General

BCL:aag

cc: Congressman Morris Udall
Congressman Teno Roncalio

FEDERAL REGIONAL COUNCIL
OF NEW ENGLAND

Room E-431
John F. Kennedy Fed. Bldg.
Boston, Mass. 02203
(617) 223-5421

August 30, 1977

RECEIVED
SEP 6 1977

Honorable James Abourezk
Select Committee on Indian Affairs
United States Senate
Washington, D. C.

Dear Senator Abourezk:

For the last two years the Indian Task Force of the Federal Regional Council of New England has chosen as a priority concern questions relating to Indian Child Welfare. For this reason the Task Force has closely watched the legislation you have put forth on this subject. At our last meeting S.1214 was again discussed. I have been asked to summarize points raised by Indian ITF members at that time in a letter to you for inclusion in the August 4, 1977 Hearing Record, which I understand remains open for written submissions.

New England Indian leaders strongly support the program described in S.1214. As with its earlier draft (S.3777), New England Native Americans are deeply concerned by the Bill's reliance on "Federal recognition" language which, as it stands now, would exclude nearly all of them from the benefits of the Bill. This point was raised in correspondence from my office to you in March and May of 1976 (attachments 1 and 2). There is a similar concern about the placement of this program in the Department of Interior.

Several New England Indian groups have proposed that the functions outlined in S.1214 be assigned to the Administration for Native Americans (ANA) in the Department of Health, Education and Welfare (DHEW). This change would circumvent all definitional barriers, based either in law or practice, which are not relevant to the needs of Indian children and families. Given the continued poor relations between DOI and all segments of this Region's Indian community, this alternative should be adopted in S.1214.

I have heard it suggested that the recognition question is a "separate issue" and should be handled under separate legislation. If it is a separate issue, then certainly it ought not to be used so boldly within S.1214 to unnecessarily exclude a significant portion of the service population described in the Bill. New England tribes oppose any legislative strategy which would require them to await the passage and implementation of additional "recognition legislation" before they might become eligible for the crucial assistance to be provided under this Bill.

BEST COPY AVAILABLE

The inclusion of S.1214 within DHEW/ANA would also insure that attention be given to the child welfare problems of Indian people from Canada who live in the United States and whose rights and status in this country are protected by the Jay Treaty of 1794, the Explanatory Articles of 1796, the Treaty of Ghent of 1814 and other treaties and agreements which they signed. The ONAP definition of Indian was redrafted specifically to deal with such people. Indian people, from tribes usually associated with Canada, are a major source of Indian to White foster and adoptive placements across the northern sections of the United States. In Aroostook County, Maine, for instance, nearly all 1,000 Indians residing there are Micmacs and Maliseets. Aroostook is part of Maliseet aboriginal territory. In 1972 there were 73 Indian children in foster care in Aroostook, about one of every seven Indian children in the county; (using incorrect 1970 census data AIPRC Task Force IV estimated one of every 3.3 Indian children, p. 205). These statistics support the contention that the Indian foster and adoptive problem in Maine is substantially a Micmac and Maliseet problem, for although this county has only one-fourth of the Indian population in the State, it has consistently had more than one-half of the Indian foster placements. In August of 1977, at the Penobscot Nation in Maine, a convention attended by 400 Native people from New England and eastern Canada, drawn primarily from the Wabanaki confederacy tribes (Penobscot, Passamaquoddy, Maliseet, Micmac and Abenaki) unanimously adopted a resolution citing the Indian Child Welfare problem (attachment 3). The resolution in part states that:

> "The existing non-Indian child welfare systems in both countries have seriously undermined the Indian family structure and have contributed to the loss of Indian identity, and families and children who have crossed the (U.S.-Canadian) border are particularly vulnerable to these systems..."

I understand that DHEW has requested that the Select Committee defer action on S.1214 in lieu of S.1928, the "Child Welfare Amendments of 1977." To the extent that these "amendments" can be changed to accommodate the program proposed in S.1214, I have heard no major objection to this suggestion, especially if this strategy will give added strength to your Bill's likelihood of passage. However, there would be great concern, if by its merger with S.1928, your proposal would in some way be diluted. Native groups in New England would particularly object to the dropping of direct Federal funding of Indian tribes and community organizations. The history of State/Indian relations, both within this Region and without, casts considerable doubt on the feasibility of any funding arrangement which would channel such Federal support through States.

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Sen. Abourezk

- 3 -

August 30, 1977

The Boston Indian Council, the Central Maine Indian Association, and possibly other New England groups have submitted detailed comments on S.1214 for the hearing record. I will defer to them in making further specific comments except to draw your attention to the points listed in my letter of May 25, 1976, which I believe are still relevant (attachment 2). I also understand that a copy of "Northeast Indian Family Structure and Welfare Delivery Systems in Maine and Massachusetts", a research and demonstration proposal developed by a consortium of Maine and Massachusetts Indian communities, has been submitted for review by your staff and for inclusion in the hearing record.

Sincerely,

Gregory P. Buesing
Indian Task Force Coordinator

Attachments

cc: Terry Polchies, FRC/ITF Indian Co-Chairman
Edward Bernard, FRC/ITF Federal Co-Chairman
Michael Ranco, CMIA
David Rudolph, CMIA
Clifford Saunders, BIC

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EASTERN AREA
Jonathan Ed Taylor
Cherokee

October 3, 1978

HAND-DELIVERED FOR
YOUR IMMEDIATE ATTENTION

Dear Congressman:

The National Congress of American Indians, the oldest, largest, and most representative Indian Organization in the country, representing the views of over 140 tribes, is today writing to urge your support for a bill which we consider to be one of the most important pieces of legislation to be reported during the entirety of the 95th Congress.

The Indian Child Welfare Act, H.R. 12533, was introduced in the House of Representatives by Congressman Udall on May 3, 1978, and was reported out of the Interior and Insular Affairs Committee to the full House on July 24, 1978. This key bill has a total of 16 co-sponsors. The companion bill in the Senate, S.1214, passed that body on November 4, 1977.

H.R. 12533, as described in the subtitle of the bill, is designed to establish standards for the placement of Indian children in foster or adoptive homes and to prevent the breakup of Indian families. The reasons that legislation of this nature is necessary is truly a grim story. In the continually vacillating policies of this country toward Indian people, our children have suffered the hardest.

The forced assimilation policies of the earlier parts of this century are still evident, even though these attitudes are supposedly history. Consider the following data. In California, the adoption rate for Indian children is 8 times the rate for non-Indians, on a per capita basis. And, in fact, 93% of these Indian children are adopted by non-Indian families. And, to cite another example, consider the fact that in South Dakota, the per capita foster care rate for Indians is 22 times the rate for non-Indians.

The Association on American Indian Affairs, in data compiled during a 19-state survey, concluded that 25-35% of all Indian children are now separated from their families. And Dr. Joseph Westermeyer, Department of Psychiatry, University of Minnesota, has reported statistics from a Minnesota study conducted between 1969 and 1971 which found that, "The rate of foster placement and state guardianship for Indian children ran 20 to 80 times that for majority children in all counties studied."

Data of this nature is to be found in every state which has a significant Indian population. It is essential that legislation be enacted to change these policies and return control over Indian children's lives to where it belongs: the child's parents and tribal courts.

The Indian Child Welfare Act sets forth provisions to create on-reservation Indian Family Development programs with full professional and legal counseling services. It delineates under which circumstances Indian children can be adopted, and mandates that the child's parents receive notice of court proceedings - which has not been done in the past. Provisions also require the Secretary of the Interior to maintain records of Indian children placed in non-Indian homes.

Indian people have been fighting for legislation of this nature for over two Congresses now. There cannot be another delay. We cannot urge strongly enough the need for your fullest support for H.R. 12533.

Please note that this legislation not only has the support of national Indian organizations and tribes across the country, but many non-Indian organizations as well, including:

American Academy of Child Psychiatry
Office of Government Relations, American Baptist Churches, USA
Emerging Social Issues, National Board of Church and Society
    of the United Methodist Church
Mennonite Central Committee, Peace Section, Washington Office
Save the Children Federation
Bureau of Catholic Indian Missions
Office for Church in Society - United Church of Christ
National Jesuit Office of Social Ministries
Union of American Hebrew Congregations
Church of the Brethren, Washington Office
Friends Committee on National Legislation
National Committee on Indian Work of the Protestant Episcopal
    Church, USA
United Presbyterian Church USA, Washington Office
Concerned United Birthparents, Inc.
American Civil Liberties Union

Once again, please help us to protect our most vital resource, our children, and support H.R. 12533.

Sincerely,

Albert W. Trimble
Executive Director
NCAI

S 1214

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[illegible]

Catholic Children's Services

Adoption
Child Day Care
Counseling
Family Life Program
Foster Family Care
Group Home Care
Single Parent Services

January 20, 1978

The Honorable Morris K. Udall
Subcommittee on Indian Affairs & Public Lands
House of Representatives
1329 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Udall:

Senate Bill 1214, Indian Child Welfare Act of 1977, would have a deep and far-reaching impact on the lives of Indian youngsters. Our agency has studied the bill as it was passed in the Senate in November, 1977.

While we see some very positive aspects, especially in Title II, Indian Family Development, which relates to developing Indian social services for tribes and families, we have grave concerns about other sections which are outlined in the attached statement.

We appreciate your review of these sections which would profoundly affect the lives of so many dependent children.

Very truly yours,

Mary E Farris

Mary Ellen Farris
Chairman, Board of Directors

MEF:njt
Encl.

A United Way Agency

1715 EAST CHERRY STREET • SEATTLE, WASHINGTON 98122 • (206) 323-6336

SEATTLE
CATHOLIC CHILDREN'S SERVICES

POSITION ON SB 1214
PROPOSED INDIAN CHILD WELFARE ACT OF 1977

Catholic Children's Services has a long history of providing social services to Indian children and families. Currently there are 30 children in foster care placements, and it is anticipated that the agency will continue to receive requests to serve other Indian children. The agency feels a deep commitment to the welfare of these children, and it is from this posture of experience and concern that we must express serious reservations about certain aspects of SB 1214, The Indian Child Welfare Act of 1977.

We support and advocate the intent of this legislation in terms of its response to the value of the Indian heritage and the importance of this heritage to Indian children. Also, the provisions which would assist Indian people develop much-needed social service resources is an essential element of the overall move toward Indian self-determination and assumption of responsibility for the various needs of the Indian peoples.

Nonetheless, we feel the proposed legislation reaches beyond the reasonable parameters of an effort to protect Indian heritage and appears to compromise the rights of parents and their children in deference to establishing rights of the tribe. Beyond this, the proposed legislation may, because of procedural complexity, introduce prolonged delays and/or protracted litigation which in effect would impede any reasonable effort to provide the child with a secure and predictable environment.

In particular, our concerns are as follows:

1. The proposed statute declares that all Indian children shall be subject to its provisions regardless of whether the parents do now or ever have recognized their Indian heritage or wish to have their child subject to the provisions of the Act. Simply put, once a determination is reached that the child is Indian (and by definition this means any person who is a member of or who is eligible for membership in a federally recognized Indian tribe), the Act moves quickly to establish both a mandated and structured order of preference for placement as well as a determination of jurisdiction for tribal courts. The clear interest of the individual, whether child or parent, becomes obscured at this point by complicated procedural requirements.

This matter becomes of particular significance when the child is of mixed racial origin and where while perhaps qualifying technically as an Indian, the dominant characteristics are clearly non-Indian. For certain of these children (where no discernible ties exist with the Indian community), the strict application of the Act may lead to complicated and prolonged inquiries following the requirements of Section 103 which will prove fruitless. The attendant delay, which we estimate could be up to several months as compared to only a few weeks for non-Indian children, will cause undue hardship on the child and its family.

Therefore, we recommend that the proposed Act be modified to permit a court of competent jurisdiction to grant a waiver of the Act where: the parent or parents of an Indian child, who do not now have or have never maintained an Indian identity make an informed request/consent for waiver of the Act. This waiver should not, however, impair the right of the child at some future time to learn of his Indian heritage and to assert this heritage for any purpose.

2. Section 101(C) provides that "the parent or parents may withdraw the consent for any reason at any time before the final decree of adoption." The scope of this provision would effectively undermine any placement plan for an Indian child and likely create an atmosphere of uncertainty and stress. Furthermore, few parents would be willing to undertake an adoptive placement under these circumstances. We would recommend that the proposed legislation be amended to require cause for withdrawing consent or structured to preclude a voluntary relinquishment of custody.

3. Section 101(a)(b) in establishing the order of preference does not include any provision for the placement of an Indian child in a non-Indian setting. Therefore, it would appear that such a placement would be precluded regardless of any circumstances which might warrant such placement. We would recommend that these sections be modified to include a non-Indian placement where it can be substantially established that this is in the best interest of the child.

4. Section 101(C) states that "a final decree of adoption may be set aside upon a showing that --- the adoption did not comply with the requirements of this Act or was otherwise unlawful, or that the consent to the adoption was not voluntary." Again, this appears to work against the intent of providing the child with a stable situation that is protected from unwarranted stress. We would recommend that the legislation be modified to require the court of competent jurisdiction prior to issuing an order of final decree to carefully reach a formal determination that the consent was voluntary and that the requirements of the Act were met to the satisfaction of the court and that no more than this should be required for validity of the decree.

Catholic Social Service of Tucson
155 WEST HELEN STREET
TUCSON, ARIZONA 85705
(602) [illegible]

JOHN E. COTTER, DIRECTOR

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· · · · · ·

MEMBER AGENCY OF UNITED WAY AND BISHOP'S CHARITY AND DEVELOPMENT FUND

January 19, 1978

JAN 24 REC'D

Representative Morris K. Udall
Cannon House Office Building - Room 235
Washington D. C. 20515

Dear Representative Udall:

We comprise the adoption staff of Catholic Social Service of Tucson. We are writing to ask that you not give your support to Senate ~~Bill 1214 which was passed by voice vote in the Senate and is to be~~ considered by your House subcommittee on Indian Affairs and Public Lands. In our opinion, the Bill is so poor, it cannot even be amended satisfactorily.

The Bill's intent is "To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes." We applaud the intent of the Bill, but we deplore what it will effect if enacted:

1. The child's rights are ignored. He must be placed with an Indian tribe regardless of his special needs (Section 103a, 103b, 103c).
2. The natural parents' right to confidentiality are violated. An Indian parent is denied the right to choose to keep the adoption confidential which is in violation of the parents' privacy (103a, 103b, 103c).
3. An Indian parent must give preference to the tribe in placement. This restricts the parents' right to free choice in planning for the child (Section 103a, 103b, 103c).
4. The availability of identifying information regarding the child's natural family to the foster or adoptive parents is a gross violation of the natural family's rights (Section 301)
5. By definition of "Indian", any child who is more than one-fourth Indian would be covered by this act. This ignores the child's other cultural ties which might well be more prominant (Section 4, Section 102f, Section 103a).

MEMBER AGENCY OF
Catholic Community Services of Southern Arizona, Inc.
THE MOST REVEREND BISHOP OF TUCSON
FRANCIS J. GREEN D.D.
THE REVEREND CHARLES A. BAST M.P.A.
DIOCESAN EXECUTIVE DIRECTOR

Representative Morris K. Udall
Cannon House Office Building
Washington D.C. 20515 - 2 - January 19, 1978

6. The child and the adoptive parents are exposed to hurt as a result of the provision that the natural parents' consent may be withdrawn at any time prior to the final decree of adoption. This might well discourage prospective Indian adoptive parents from pursuing adoption (Section 101c).

7. The child is exposed to renewed rejection. If an adoption fails, the natural parents and extended family must be recontacted (implying that they can again say "no" to the child - Section 101c).

8. The value of home and family is sacrificed on the altar of Indianness. A custodial Indian institution is preferred to a non-Indian foster home (Section 103b).

This Bill deserves your close examination. Our Indians deserve better legislation.

Sincerely,

Jane Daniel
Adoption Coordinator

Lexann Downey
Lexann Downey
Adoption Worker

Frank McDonough
Frank McDonough
Associate Administrator

JD:LD:FM - acy

[illegible]

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EXECUTIVE DIRECTOR
Rev. Msgr. Lawrence J. Corcoran

June 12, 1978

Honorable Morris K. Udall
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Udall:

While we support the objectives of the Indian Child and Welfare Act to establish safeguards in the placement of Indian children and to strengthen the ability of tribes to provide child and family services, in a previous letter to you (May 25, 1978) we noted some specific difficulties in the subcommittee bill which are not, in our view, resolved by the latest redraft we have seen.

In addition we have been in touch with other organizations (American Public Welfare Association, Child Welfare League and the North American Center on Adoptions) which have raised additional problems which need more careful study.

We are aware that several members of the Interior Committee also have concerns about the bill and the substitute which is being proposed.

With the above concerns in mind we strongly urge that the bill be given wider circulation for additional study and input before it is reported by your Committee and before it is debated on the floor of the House of Representatives.

Sincerely,

Lawrence J. Corcoran
Rev. Msgr. Lawrence J. Corcoran
Executive Director

file